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***California
Timber Yield
Tax Law***

***Revenue and Taxation Code
Part 18.5 of Division 2
(Including Related Codes
and Regulations)***

January 2003

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TIMBER YIELD TAX LAW

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(PART 18.5, DIVISION 2, REVENUE AND TAXATION CODE)

- Chapter 1. General Provisions and Definitions. §§ 38101–38110.
- 2. Imposition of the Tax. §§ 38115–38116.
- 3. Determination of Rates. §§ 38202–38205.
- 4. Timber Reserve Fund Tax. §§ 38301–38303. [Repealed.]
- 4.5. Registration. § 38351.
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- 6. Collection of Taxes. §§ 38501–38576.
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- 10. Disposition of Proceeds. §§ 38901–38908.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 38101. Title.
- § 38101.5. Legislative Intent.
- § 38102. Construction.
- § 38103. “Timber.”
- § 38103.1. “Timberland.”
- § 38104. “Timber owner.”
- § 38105. “Rate adjustment county.”
- § 38106. “Person.”
- § 38107. “Tax rate area.” [Repealed.]
- § 38108. “Scaling date.”
- § 38109. “Immediate harvest value.”
- § 38110. “Yield tax.”

38101. Title. This part is known and may be cited as the “Timber Yield Tax Law.”

38101.5. Legislative intent. (a) The Legislature finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural renewable resources of the state and that there is great concern throughout the state relating to their protection, restoration, and utilization.

(b) The Legislature further finds and declares that the forest resources and timberlands of the state produce timber and other forest products, recreational opportunities, regional economic vitality, employment opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.

(c) The Legislature further finds and declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public’s need for timber and other forest products, while giving consideration to the public’s need for watershed protection,

* The yield tax imposed shall be applied on and after April 1, 1977.

† Part 18.5 was added by Stats. 1976, Ch. 176, p. 324, in effect May 24, 1976.

Note.—Section 17 of Stats. 1976, Ch. 176, p. 351, provided that the Legislature finds and declares that the yield tax imposed by this act is a state tax which is authorized under subdivision (j) of Section 3 of Article XIII of the Constitution for the state purpose of encouraging the continued use of timberlands for the production of trees for timber products. In doing so, the public policy of the state as expressed in the Constitution will be entirely fulfilled and the state as a whole will benefit. The yield tax is in lieu of all ad valorem property taxes on timber.

Secs. 20 and 21 thereof provided no payment by state to local governments because of this act.

fisheries and wildlife, employment opportunities, regional economic vitality, and recreational opportunities alike in this and future generations.

(d) The Legislature further finds that it is not the intent of the Legislature by the enactment of this part to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

History.—Added by Stats. 1990, Ch. 1600, in effect January 1, 1991.

38102. Construction. Except where the context otherwise requires, the definitions in this chapter govern the construction of this part.

38103. “Timber.” “Timber” means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, including Christmas trees, on privately or publicly owned land, but does not mean nursery stock.

38103.1. “Timberland.” “Timberland” means privately or publicly owned land which is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.

38104. “Timber owner.” “Timber owner” means any person who owns timber immediately prior to felling or the first person who acquires either the legal title or beneficial title to timber after it has been felled from land owned by a federal agency or any other person or agency or entity exempt from property taxation under the Constitution or laws of the United States or under the Constitution or laws of the State of California. “Timber owner” includes any person who owns or acquires legal title or beneficial title to downed timber in this state.

“Timber owner” also includes the seller of timber located on land owned by that seller if the timber sales agreement, contract, or other document provides for the payment of the purchase price on the basis of actual timber volume scaled and does not contain a passage of title clause.

History.—Stats. 1978, Ch. 1112, in effect January 1, 1979, substituted “property” for “state” after “exempt from” in the first sentence. Stats. 1981, Ch. 947, in effect January 1, 1982, added the second paragraph.

Construction.—Application of tax to non-Indian purchasers of tribal timber is preempted by federal law. State’s general interest in revenue collection does not outweigh specific federal and tribal interest with which tax interferes, the tax does not fund services directly related to harvesting of tribal timber, and the tax is otherwise unconnected with tribal timber activities. *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657.

38105. “Rate adjustment county.” “Rate adjustment county” means the following counties: Alpine, Del Norte, El Dorado, Glenn, Humboldt, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Tehama, Trinity, and Yuba.

38106. “Person.” “Person” includes any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, limited liability company, estate, trust, business trust, receiver,

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trustee, syndicate, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

History.—Stats. 1994, Ch. 1200, in effect September 30, 1994, substituted “partnership,” for “copartnership,” after “firm,” and added “limited liability company,” after “corporation.”

38107. **“Tax rate area.”** [Repealed by Stats. 1983, Ch. 1281, in effect September 30, 1983.]

38108. **“Scaling date.”** “Scaling date” means the date when the quantity of timber harvested, by species, is first definitely determined.

Except for national forest timber, the scaling date shall be no later than the date of delivery of the felled trees to the storage or wood-processing area, whichever is first, or an alternative approved by the board. For national forest timber, the definitely determined timber volume included in forest service, United States Department of Agriculture, billing statements to timber sale contract holders, or an alternative approved by the board after a public hearing, shall be the basis for tax payment.

History.—Stats. 1979, Ch. 563, in effect September 10, 1979, added “, or an alternative approved by the Board after a public hearing,” after “holders” in the second sentence of the second paragraph. Stats. 1981, Ch. 714, in effect January 1, 1982, substituted “United States Department of Agriculture” for “USDA” in the second sentence of the second paragraph.

38109. **“Immediate harvest value.”** “Immediate harvest value” means the amount that each species or subclassification of timber would sell for on the stump at a voluntary sale made in the ordinary course of business for purposes of immediate harvest. Such immediate harvest values shall be expressed in terms of amount to the nearest dollar per thousand board feet, net Scribner Decimal C log rule, or other unit of measure chosen by the board, and shall be determined in a manner which makes reasonable and adequate allowances for age, size, quality, costs of removal, accessibility to point of conversion, market conditions and all other relevant factors as determined by the board.

For the purposes of this section, the immediate harvest value of Christmas trees shall be the sale price of the Christmas trees in quantities of 100 trees or more in the market area nearest to the place where the trees are cut.

Prior to December 31, 1976, and periodically thereafter as determined by the board, the board in consultation with the Timber Advisory Committee and with the California Division of Forestry and after public hearings, shall adopt rules and regulations establishing a standard unit of measure and establishing conversion factors which convert prevalent units of measure in use in California to Scribner Decimal C log rule or other unit of measure chosen as a standard.

Immediate harvest value.—The definition of “immediate harvest value” manifestly encompasses old growth as well as young growth. *Soper-Wheeler Co. v. State Board of Equalization*, 124 Cal.App.3d 913.

38110. **“Yield tax.”** “Yield tax” means the dollar amount derived by multiplying the net volume of harvested timber by the appropriate immediate harvest value per unit and by the yield tax rate.

CHAPTER 2. IMPOSITION OF THE TAX

- § 38115. Imposition and rate of timber yield tax.
- § 38116. Low value exemption.

38115. Imposition and rate of timber yield tax. A timber yield tax is hereby imposed on every timber owner who harvests his timber or causes it to be harvested on or after April 1, 1977, and on every timber owner of felled or downed timber who acquires title to such felled or downed timber in this state from an exempt person or agency described in Section 38104 on or after that date, and on every person who, without authorization, intentionally or unintentionally harvests or causes to be harvested timber owned by another, at the rate of 6 percent of the total immediate harvest value of that timber or at such other rate as may be fixed pursuant to Chapter 3 (commencing with Section 38202) of this part. The immediate harvest value shall be determined as of the scaling date.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, added “on or” between “38104” and “after”. Stats. 1981, Ch. 947, in effect January 1, 1982, added “and on every another,” after “date” in the first sentence.

Construction.—Application of tax to non-Indian purchasers of tribal timber is preempted by federal law. State’s general interest in revenue collection does not outweigh specific federal and tribal interest with which tax interferes, the tax does not fund services directly related to harvesting of tribal timber, and the tax is otherwise unconnected with tribal timber activities. *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657.

38116. Low value exemption. (a) Subject to the limitation in subdivision (b), there is exempted from the tax imposed by this part timber whose immediate harvest value is so low that, if not exempt, the tax on the timber would amount to less than the cost of administering and collecting the tax, as determined by the board by rule. The board, after consultation with the Timber Advisory Committee, shall establish by rule the level at which the tax that would apply is less than the cost to administer and collect the tax.

(b) The board shall have no authority to exempt timber with an estimated immediate harvest value of more than three thousand dollars (\$3,000).

History.—Added by Stats. 1998, Ch. 591 (SB 2237), in effect January 1, 1999.

CHAPTER 3. DETERMINATION OF RATES

- § 38202. Adjustment of yield tax rate.
- § 38203. Certification of yield tax rate.
- § 38203.5. Certification of yield tax rates for 1979, 1980, 1981, and 1982.
- § 38204. Designation of timber value areas.
- § 38205. Review by Legislative Analyst. [Repealed.]

38202. Adjustment of yield tax rate. During December, 1978, and December of each subsequent year, after public hearings, the board shall adjust the yield tax rate to the nearest one-tenth of 1 percent in the same proportion that the average rate of general property taxation in the rate adjustment counties in the current tax year differs from the average rate of general property taxation in the rate adjustment counties in the preceding tax year. The board shall compute the average rate of general property taxation in the rate adjustment counties by (a) adding the county, city, school district, and other general taxes, but not the special taxes on intangibles, aircraft, or any other property, which is subject to a uniform statewide tax rate, nor special assessments, and (b) dividing the amount obtained by the total

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assessed valuation in the rate adjustment counties, exclusive of the homeowners' and business inventory exemptions, as shown by the county tax rolls for the same year.

"Total assessed valuation," as used in this section, does not include the assessment of property which is subject to a uniform statewide tax rate.

"Special assessment" as used in this section, means any amount levied solely against land or land and improvements.

When calculating the yield tax rate for the 1981–82 fiscal year, the 1980–81 average rate of general property taxation should first be divided by four.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, deleted "except real property" between "other property," and "which" in the second sentence of the first paragraph. Stats. 1978, Ch. 1109, in effect September 26, 1978, deleted the phrase in the first sentence "On or before December 31, 1978, and December 31" and replace it with "During December, 1978, and December". Stats. 1980, Ch. 1208, in effect January 1, 1981, added the fourth paragraph. Stats. 1981, Ch. 261, in effect January 1, 1982, deleted "baled cotton" after "aircraft," in the second sentence of the first paragraph.

38203. Certification of yield tax rate. On or before December 31, 1978, and on or before December 31 of each year thereafter, the board shall certify to the Director of Finance and to the Legislature the rate determined pursuant to Section 38202, and such rate shall be the yield tax rate applied under Section 38115 for the 12-month period beginning on the next succeeding January 1.

38203.5. Certification of yield tax rates for 1979, 1980, 1981, and 1982. No adjustment of yield tax rates certified for the years 1979, 1980, or 1981 shall be made to reflect any portion of the property tax rate levied on the unsecured roll for the 1978–79 tax year, less the rate for voter-approved debt, which is in excess of four dollars (\$4) per one hundred dollars (\$100) of assessed value. The yield tax rate for 1982, however, shall be calculated as if the yield tax rates for those years had been adjusted to reflect the excess property tax rates.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982.

Note.—Section 26 of Stats. 1981, Ch. 947, provided the Legislature finds and declares that there are public purposes for making the expenditure of public funds as provided in Section 38203.5 of the Revenue and Taxation Code, as added by this act. Those public purposes are to avoid the public expense and taxpayer confusion that would result from collecting additional taxes for the 1979 year while at the same time refunding excessive taxes for the 1980 year where, in many instances, comparable amounts would be collected from and refunded to the same taxpayers. Those public purposes are also to avoid the public expense and taxpayer confusion that would result from reducing the 1981 yield tax rate and increasing the 1981 reserve fund tax rate by identical and hence, offsetting percentages.

38204. Designation of timber value areas. (a) On or before December 31, 1976, and periodically thereafter as determined by the board, the board after consultation with the Timber Advisory Committee and after public hearings held pursuant to the Administrative Procedure Act, shall designate areas containing timber having similar growing, harvesting, and marketing conditions to be used as timber value areas for the preparation and application of immediate harvest values. The board may designate areas for timber standing on lands owned by local agencies and on timberland as defined in Section 51104 of the Government Code and designate separate areas for timber standing on national forest lands owned by the United States government. On or before March 1, 1977, for timber harvested between April 1 and December 31, 1977, and on or before December 31, 1977, and on

June 30 and December 31 of each year thereafter for timber harvested during the succeeding two calendar quarters, the board, after consultation with the Timber Advisory Committee, shall estimate the immediate harvest values of each species or subclassification of timber within those areas as of the initial date of the period. These values shall be determined under rules adopted pursuant to the Administrative Procedure Act from the best evidence available, including (1) gross proceeds from sales on the stump of similar timber of like quality and character at similar locations, or (2) gross proceeds from sales of logs, or of finished products, adjusted to reflect only the portion of those proceeds attributable to value on the stump immediately prior to harvest, or a combination of (1) and (2), and shall be determined in a manner that makes reasonable allowance for differences in age, size, quality, cost of removal, accessibility to point of conversion, market conditions and other relevant factors.

(b) The board, either on its own motion after consultation with the Timber Advisory Committee or in response to application from a timber owner, may modify the immediate harvest values to reflect material changes in timber values that result from fire, blowdown, ice storm, flood, disease, insect damage or other cause, for any area or part thereof in which damaged timber is located. The board shall specify any additional accounting or other requirements to be complied with in reporting and paying the tax on that timber.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, added “on or before December 31, 1977, and” to subdivision (a) between “December 31, 1977 and” and “on June 30”. Stats. 1981, Ch. 947, in effect January 1, 1982, added “and periodically thereafter as determined by the board,” after “1976,” in the first sentence of subdivision (a). Stats. 1984, Ch. 678, in effect January 1, 1985, substituted “Section 51104” for “Section 51100” after “as defined in” in the second sentence of subdivision (a). Stats. 1994, Ch. 1222, in effect January 1, 1995, added a comma after “December 31, 1977” and substituted “those” for “such” after “of timber within” in the third sentence; substituted “These” for “Such” before “values”, substituted “those” for “such” after “the portion of”, and substituted “that” for “which” after “determined in a manner” in the fourth sentence of subdivision (a); added “after consultation with the Timber Advisory Committee” after “its own motion” in the first sentence, and substituted “that” for “such” after “paying the tax on” in the second sentence of subdivision (b).

38205. Review by Legislative Analyst. [Repealed by Stats. 1983, Ch. 352, in effect July 25, 1983.]

CHAPTER 4. TIMBER RESERVE FUND TAX

[Repealed by Stats. 1982, Ch. 1058, in effect January 1, 1983.]

- § 38301. Imposition and rate of timber reserve fund tax. [Repealed.]
- § 38302. Legislative intent. [Repealed.]
- § 38303. Adjustment of timber reserve fund tax rate. [Repealed.]

CHAPTER 4.5. REGISTRATION

- § 38351. Registration with board.

38351. Registration with board. Every person who owns timber subject to a timber harvest plan, every person who is required to file a notice of timber operations with the State Forester, every person who owns timber maintained for eventual harvest as Christmas trees, and every person who is the first person who acquires either legal title or beneficial title to downed timber or timber after it has been felled from land owned by a federal agency or any other person or agency or entity exempt from state taxation under the

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Constitution or laws of the United States or under the Constitution or laws of the State of California shall register with the board giving such information as the board may require.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “such information as the board may require.” for “the name and address of his place of business and the location of the areas where he intends to fell timber or acquire legal title or beneficial title to felled or downed timber.” Stats. 1981, Ch. 714, in effect January 1, 1982, added “or” between “agency” and “entity”. Stats. 1991, Ch. 646, in effect January 1, 1992, added “every person . . . Christmas trees,” after “Forester,”.

CHAPTER 5. DETERMINATIONS

- Article 1. Returns and Payments. §§ 38401–38405.
- 2. Deficiency Determinations. §§ 38411–38419.
- 3. Determinations if No Return Made. §§ 38421–38425.
- 4. Jeopardy Determinations. §§ 38431–38435.
- 5. Redeterminations. §§ 38441–38447.
- 6. Interest and Penalties. §§ 38451–38455.

Article 1. Returns and Payments

- § 38401. Due date.
- § 38402. Return.
- § 38403. Filing return.
- § 38404. Return periods.
- § 38405. Extension of time.

38401. Due date. The taxes imposed by this part are due and payable to the board quarterly on or before the last day of the month next succeeding each quarterly period in which the scaling date for the timber harvested occurs.

38402. Return. On or before the last day of the month following each calendar quarter, a return for the preceding quarterly period shall be filed with the board in such form as the board may prescribe. The return shall include the following information with respect to timber harvested by the timber owner in the preceding calendar quarter: the volume harvested and the number of Christmas trees cut; the quarter the timber was harvested and the quarter the Christmas trees were cut; the date or dates the timber was scaled; the species; and any other information deemed necessary by the board for the administration of this part. At the assessor’s request, the board shall provide copies of these returns to the assessor of the county from which the timber was harvested.

History.—Stats. 1983, Ch. 1281, in effect September 30, 1983, deleted “according to each tax rate area, as assigned by the assessor pursuant to Section 4582.8 of the Public Resources Code” after “trees cut” in the second sentence, deleted the former third sentence, and substituted “the assessor’s” for “his” after “At” in the third sentence.

38403. Filing return. The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the board.

38404. Return periods. The board if it deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters, or for other than quarterly periods.

38405. Extension of time. The board for good cause may extend for not to exceed one month the time for making any return or paying any

amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the adjusted annual rate established pursuant to Section 19521 from the date on which the tax would have been due without the extension until the date of payment.

History.—Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted “adjusted annual rate established pursuant to Section 19269” for “rate of 1 percent per month, or fraction thereof,” after “interest at the” in the second paragraph. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “Section 19521” for “Section 19269” after “established pursuant to”.

Note.—Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

Article 2. Deficiency Determinations

- § 38411. Deficiency determination.
- § 38412. Interest.
- § 38413. Offsets.
- § 38414. 10 percent penalty.
- § 38415. 25 percent penalty.
- § 38416. Notice of determination. [Repealed]
- § 38416. Notice of determination.
- § 38417. Limitations; deficiency determinations.
- § 38418. Limitations; deficiency determination; decedent.
- § 38419. Waiver.

38411. Deficiency determination. If the board is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

38412. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

History.—Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted “adjusted annual rate established pursuant to Section 19269” for “rate of 1 percent per month, or fraction thereof,” after “interest at the”. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “Section 19521” for “Section 19269” after “established pursuant to”.

Note.—Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

38413. Offsets. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Sections 38451 and 38606.

38414. 10 percent penalty. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional

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disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

38415. 25 percent penalty. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or authorized rules and regulations, a penalty of 25 percent of the amount of the determination shall be added thereto.

38416. Notice of determination. [Repealed by Stats. 1987, Ch. 498, effective January 1, 1988.]

38416. Notice of determination. The board shall give to the person written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation, or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering it to the person to be served and service is complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

38417. Limitations; deficiency determinations. Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

38418. Limitations; deficiency determination; decedent. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

38419. Waiver. If before the expiration of the time prescribed in Section 38417 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 3. Determinations If No Return Made

- § 38421. Determination; failure to file return.
- § 38422. Offsets.
- § 38423. Interest.
- § 38424. Penalties.
- § 38425. Notice of determination.

38421. Determination; failure to file return. If any person fails to make a return, the board shall make an estimate of the amount of the total timber harvested by the person and the immediate harvest value of that timber. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one period. When a person discontinues activities subject to the tax, a determination may be made at any time thereafter, within the periods specified in Section 38417, as to liability arising out of the person's activities subject to the tax, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

History.—Stats. 1981, Ch. 714, in effect January 1, 1982, substituted "into" for "in" in the second sentence.

38422. Offsets. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Sections 38451 and 38606.

38423. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

History.—Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted "adjusted annual rate established pursuant to Section 19269" for "rate of 1 percent per month, or fraction thereof," after "interest at the". Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "Section 19521" for "Section 19269" after "established pursuant to".

Note.—Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

38424. Penalties. If the failure of any person to file a return is due to fraud or an intent to evade this part or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in Section 38421.

38425. Notice of determination. Promptly after making its determination the board shall give to the person written notice of the

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estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 4. Jeopardy Determinations

- § 38431. Jeopardy determination.
- § 38432. Interest and penalty.
- § 38433. Petition for redetermination; security.
- § 38434. Service of notice.
- § 38435. Request for administrative hearing.

38431. Jeopardy determination. If the board believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable.

38432. Interest and penalty. If the amount specified in the determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, and the delinquency penalty and the interest provided in Section 38451 shall attach to the amount of the tax or the amount of the tax required to be collected, unless a petition for redetermination is filed within the 10 days.

History. — Stats. 1987, Ch. 498, in effect January 1, 1988, deleted “unless a petition for redetermination is filed within the 10 days,” after “the 10 days,” and added “, unless a petition for redetermination is filed within the 10 days” after “collected” in the first sentence.

38433. Petition for redetermination; security. The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 5 of this chapter. He shall, however, file the petition for redetermination with the board within 10 days after the service upon him of notice of the determination. The person shall also within the 10-day period deposit with the board such security as it may deem necessary to insure compliance with this part. The security may be sold by the board in the manner prescribed by Section 38501.

38434. Service of notice. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

38435. Request for administrative hearing. In accordance with those rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(c) To request the release of all or a part of the property to the person.

(d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 38433, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except the sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for an administrative hearing, the board may allow a filing of this application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 38432 relating to the finality date of the determination or to penalty or interest.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

Article 5. Redeterminations

§ 38441.	Petition for redetermination.
§ 38442.	Form and content of petition.
§ 38443.	Oral hearing.
§ 38444.	Decrease or increase of determination.
§ 38445.	Finality date of order or decision.
§ 38446.	Due date of determination; penalty.
§ 38447.	Service of notice.

38441. Petition for redetermination. Any person against whom a determination is made under Articles 2 or 3 of this chapter or any person directly interested may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

38442. Form and content of petition. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

38443. Oral hearing. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

38444. Decrease or increase of determination. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section

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38415 or Section 38424 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the last day of the calendar month following the quarterly period for which the increase is asserted.

38445. Finality date of order or decision. The order or decision of the board upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

38446. Due date of determination; penalty. All determinations made by the board under Articles 2 or 3 of this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

38447. Service of notice. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 6. Interest and Penalties

- § 38451. Interest and penalties.
- § 38452. Excusable delay.
- § 38453. Excusable delay due to disaster.
- § 38454. Reasonable reliance on written advice: relief of tax, penalty and interest.
- § 38455. Error or delay by board employee-interest relief.

38451. Interest and penalties. Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Articles 2 or 3 of this chapter, within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or the amount of tax, plus interest at the adjusted annual rate established pursuant to Section 19521 from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

History.—Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted “adjusted annual rate established pursuant to Section 19269” for “rate of 1 percent per month, or fraction thereof,” after “interest at the”. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “or the amount” for “or amount” after “in addition to the tax”, and substituted “Section 19521” for “Section 19269” after “established pursuant to”.

Note.—Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

38452. Excusable delay. (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 38421 and 38451.

(b) Except as otherwise provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, designated the former first paragraph as subdivision (a); designated the former second paragraph as subdivision (b) and added “Except as otherwise provided in subdivision (c),” before “any person” and substituted “he or she bases his or her” for “he bases his” after “upon which” in the first sentence therein; and added subdivision (c).

38453. Excusable delay due to disaster. If the board finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 38405, 38423, and 38451.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he bases his claim for relief.

History—Added by Stats. 1981, Ch. 947, in effect January 1, 1982.

38454. Reasonable reliance on written advice: relief of tax, penalty and interest. (a) If the board finds that a person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person’s failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board’s regulations, or a final decision of a court, which renders the board’s earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person’s written request to the board and a copy of the board’s written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board’s written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

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38455. Error or delay by board employee-interest relief. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if the person filed a timely report and no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted “this part” for “Sections 38412, 38423, 38432, and 38451” after “person by” in the first sentence of subdivision (a).

CHAPTER 6. COLLECTION OF TAXES

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| Article 1. | Security for Tax. §§ 38501–38505. |
| 2. | Suit for Tax. §§ 38511–38515. |
| 3. | Judgment for Tax. §§ 38521–38525. |
| 4. | Priority and Lien of Tax. §§ 38531–38536. |
| 5. | Warrant for Collection of Tax. §§ 38541–38543. |
| 6. | Seizure and Sale. §§ 38551–38554. |
| 7. | Payment on Termination of Business and Successor’s Liability. §§ 38561–38565. |
| 8. | Miscellaneous Provisions. §§ 38571–38576. |

Article 1. Security for Tax

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| § 38501. | Security. |
| § 38502. | Notice to creditors. [Repealed.] |
| § 38502. | Notice to creditors. |
| § 38503. | Notice of levy. [Repealed.] |
| § 38503. | Notice of levy. |
| § 38503.5. | Employer withheld earnings. |
| § 38504. | Installment payment agreement. |
| § 38404.5. | Installment payment agreement; annual statement. |
| § 38505. | Return of levied property. |

38501. Security. The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject thereto, to place with it such security as the board may determine. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section and Section 38565. The amount of the security shall be fixed by the board but, except as noted below, shall not be greater than twice the estimated average liability of persons filing returns for quarterly periods or three times the estimated average liability of persons required to file returns for monthly periods, determined in such manner as the board deems proper, or ten thousand dollars (\$10,000), whichever amount is the

lesser. The limitations herein provided apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the limitations herein provided. The board may sell the security at public auction if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest, or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his or her address as it appears in the records of the board. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who placed the security.

History.—Stats. 1991, Ch. 236, in effect July 29, 1991, substituted “ensure” for “insure” after “necessary to” in the first sentence, added the second sentence, substituted “to do so” for “so to do” after “necessary” in the sixth sentence; and added “or her” after “his” in the seventh sentence.

38502. Notice to creditors. [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

38502. Notice to creditors. (a) If any person is delinquent in the payment of the amount required to be paid by him or her or in the event a determination has been made against him or her which remains unpaid, the board may, not later than three years after the payment became delinquent or within 10 years after the last recording of an abstract under Section 38523 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in its possession or under its control any credits or other personal property belonging to the delinquent, or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires earlier. All persons so notified shall forthwith, after receipt of the notice, advise the board of all those credits, other personal property, or debts in their possession, under their control, or owing by them.

(b) If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or a state or federal savings and loan association or other credits or personal property in the possession or under the control of a bank or a state or federal savings and loan association, the notice to be mailed shall

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state the amount, interest, and penalty due from the person, and shall be delivered or mailed to the branch or office of the bank or the state or federal savings and loan association at which the deposit is carried or at which the credits or personal property is held. A bank, a state or federal savings and loan association, or a state or federal credit union withholding any deposit or other credits or personal property required to be withheld in which the delinquent taxpayer and another person or persons have an interest, or held in the name of a third party or parties in which the delinquent taxpayer is ultimately determined to have no interest, is not liable therefor to any of the persons who have an interest in the deposit or other credits or personal property unless the deposit or other credits or personal property is released or transferred to the delinquent taxpayer.

(c) In the case of a deposit or other credits or personal property for which the transfer or other disposition is prevented, the depository institution required to prevent transfer or other disposition shall send a notice by first-class mail to each person named on a deposit, other credits, or personal property included in the notice from the board, provided a current address for each person is available to the depository institution. This notice shall inform each person as to the reason for preventing transfer or disposition of the deposit or other credits or personal property, the amount thereof which is prevented from transfer or other disposition, and the date by which that amount is to be remitted to the board. An institution may assess the deposit or other credits or personal property of each person receiving this notice a reasonable service charge not to exceed three dollars (\$3).

(d) Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank or a state or federal savings and loan association, the aggregate amount of deposits, credits, or personal property to be withheld shall be an amount equal to two times the amount of the tax, interest, or penalty due from the person. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of that transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

38503. Notice of levy. [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

Text of section effective until July 1, 2001.

38503. Notice of levy. (a) Subject to the limitations in subdivisions (b) and (c), the board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their

control, any credits or other personal property belonging to a timber owner liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that timber owner, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the timber owner during the period of the levy.

(d) For the purposes of this section, “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. “Payments” does include all of the following:

(1) Payments due for services for independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the timber owner liable for the tax.

(3) Any other payments or credits due or becoming due the timber owner as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

Text of section operative July 1, 2001.

38503. Notice of levy. (a) Subject to the limitations in subdivisions (b) and (c), the board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a timber owner liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that timber owner, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate.

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(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the timber owner during the period of the levy.

(d) For the purposes of this section, “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. “Payments” does include all of the following:

(1) Payments due for services for independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the timber owner liable for the tax.

(3) Any other payments or credits due or becoming due the timber owner as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, operative July 1, 2001, substituted “paragraph (29) of subdivision (a) of Section 9102” for “Section 9105” after “as defined in” in subdivision (d).

38503.5. Employer withheld earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant to Section 38503 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted

amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

38504. Installment payment agreement. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) The notice requirement in subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date in which the board's notice of determination or redetermination becomes final, and the person complies

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with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 38446.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added “The notice requirement in” before “subdivision (b)” in the first sentence of subdivision (d) and added subdivision (e).

38504.5. Installment payment agreement; annual statement. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 38504 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

38505. Return of levied property. Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (a) The levy on the property was not in accordance with the law.
- (b) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 38504 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (c) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 2. Suit for Tax

- § 38511. Court action.
- § 38512. Rules of procedure.
- § 38513. Attachment.
- § 38514. Certificate of delinquency.
- § 38515. Service of process.

38511. Court action. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the recording of an abstract under Section 38523 or the recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to collect the amount delinquent together with penalties and interest.

History.—Stats. 1980, Ch. 600, in effect January 1, 1981, substituted “the recording or filing of a notice of state tax lien under Section 7171 of the Government Code” for “of a certificate under Section 38532 or 38533” after “38523 or” in the first sentence.

38512. Rules of procedure. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

38513. **Attachment.** In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

38514. **Certificate of delinquency.** In the action a certificate by the board showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of tax, of the delinquency of the amounts set forth, and of the compliance by the board with all the provisions of this part in relation to the computation and determination of the amounts.

38515. **Service of process.** In any action brought under this part process may be served according to the Code of Civil Procedure and the Civil Code of this state or may be served upon any agent or clerk in this state employed by any timber owner place of business maintained by the timber owner in this state. In the latter case a copy of the process shall forthwith be sent by registered mail to the timber owner at his principal or home office.

Article 3. Judgment for Tax

- § 38521. Request for judgment.
- § 38522. Entry and filing of judgment.
- § 38523. Abstract of judgment; lien.
- § 38524. Execution.
- § 38525. Release of property subject to lien.

38521. **Request for judgment.** If any amount required to be paid to the state under this part is not paid when due, the board may within three years after the amount is due file in the office of the County Clerk of Sacramento County, or any county, a certificate specifying the amount required to be paid, interest and penalty due, the name and address as it appears on the records of the board of the person liable, the compliance of the board with this part in relation to the determination of the amount required to be paid, and a request that judgment be entered against the person in the amount required to be paid, together with interest and penalty as set forth in the certificate.

38522. **Entry and filing of judgment.** The county clerk immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the person in the amount required to be paid, together with interest and penalty as set forth in this certificate. The county clerk may file the judgment in a looseleaf book entitled, "Special Judgments for State Timber Yield Tax."

38523. **Abstract of judgment; lien.** An abstract of the judgment or a copy may be filed for record with the county recorder of any county. From the time of the filing the amount required to be paid together with interest and penalty set forth constitutes a lien upon all the real property in the county owned by the person liable or afterward and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the date of the judgment so entered by the county clerk unless sooner released or otherwise discharged. The lien may within 10 years from the date of the judgment or within 10 years from the date of the

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last extension of the lien in the manner herein provided, be extended by filing for record in the office of the county recorder of any county an abstract or copy of the judgment and from the time of such filing the lien shall be extended to the real property in such county for 10 years unless sooner released or otherwise discharged.

38524. Execution. Execution shall issue upon the judgment upon request of the board in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the Code of Civil Procedure.

38525. Release of property subject to lien. (a) If the board determines that the amount of tax, interest, and penalties are sufficiently secured by a lien or other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the tax, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

History.—Added by Stats. 1985, Ch. 186, effective January 1, 1986.

Article 4. Priority and Lien of Tax

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| § 38531. | Priority. |
| § 38532. | Recording certificate; lien. |
| § 38533. | Filing with Secretary of State; statewide lien. [Repealed.] |
| § 38534. | Release of lien. [Repealed.] |
| § 38535. | Unenforceable lien. [Repealed.] |
| § 38536. | Certificate of release. [Repealed.] |

38531. Priority. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his assets.
- (c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
- (d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

History.—Stats. 1980, Ch. 600, in effect January 1, 1981, deleted “recorded” before the first “lien” and substituted the balance of the sentence for “which attached prior to the date when the amounts required to be paid became a lien” after the first “lien” in the first sentence of the second paragraph.

38532. Recording certificate; lien. (a) If any amount required to be paid to the state under this part is not paid at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts received under Section 38431 (pertaining to jeopardy assessments), the date the notice of the board’s finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

History.—Stats. 1980, Ch. 600, in effect January 1, 1981, added “(a)” to the beginning of the first paragraph, substituted the balance of the first paragraph after “is not paid” and added subdivision (b).

38533. Filing with Secretary of State; statewide lien. [Repealed by Stats. 1980, Ch. 600, in effect January 1, 1981.]

38534. Release of lien. [Repealed by Stats. 1980, Ch. 600, in effect January 1, 1981.]

38535. Unenforceable lien. [Repealed by Stats. 1980, Ch. 600, in effect January 1, 1981.]

38536. Certificate of release. [Repealed by Stats. 1980, Ch. 600, in effect January 1, 1981.]

Article 5. Warrant for Collection of Tax

§ 38541. Warrant; time of issuing.

§ 38542. Fees and expenses.

§ 38543. Collection of fees.

38541. Warrant; time of issuing. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 38523 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of

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execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

History.—Stats. 1980, Ch. 600, in effect January 1, 1981, substituted “the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code” for “of a certificate under Section 38532” after “38523 or” in the first sentence. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “sheriff or marshal” for “sheriff, marshal or constable” after “directed to any” in the first sentence.

38542. Fees and expenses. The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “sheriff or marshal,” for “sheriff, marshal or constable,” after “or advance to”, and substituted “his or her” for “his” after “and expenses for” in the first sentence.

38543. Collection of fees. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

Article 6. Seizure and Sale

- § 38551. Seizure and sale.
- § 38552. Notice of sale.
- § 38553. Bill of sale; deed.
- § 38554. Disposition of proceeds.

38551. Seizure and sale. At any time within three years after any person is delinquent in the payment of any amount, the board may forthwith collect the amount in the following manner: The board shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

38552. Notice of sale. Notice of the sale and the time and place thereof shall be given to the delinquent person and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served enclosed in an envelope addressed to the taxpayer or other person at his or her last known address or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

History.—Stats. 1990, Ch. 1528, in effect January 1, 1991, added “and to all persons . . . the property” after “person”, substituted “20” for “10” after “least”, added “personally served” after “shall be”, added “taxpayer or other” after “addressed to the”, and added “or her” after “his” in the first sentence; substituted “If not personally served, the notice” for “It” in the second sentence; deleted “also” after “shall”, substituted “pursuant to . . . Code,” for “for at least 10 days before the date set for the sale” after “published”, and substituted “city” for “county” after “published in the” in the third sentence; substituted “or a part thereof . . . if not, in a” for “seized is to be sold. If there is no” after “property”, combining the former third and fourth sentences; added “published” after “circulation” and added “in which the property or a part thereof is located” after “county” in the new third sentence; created a new fourth sentence beginning with “Notice”; added “also” after “shall”, substituted “both of the following manners” for “in three public places in the county 10 days prior to the date set for the sale” after “posted in” in the fourth sentence, and added subsections (a) and (b); created new second paragraph with former fifth sentence; and added “taxes,” after “including”, and substituted “is” for “, interest, penalty and costs are” after “due” in the second paragraph.

38553. Bill of sale; deed. At the sale the board shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

38554. Disposition of proceeds. If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the state, the board shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the person liable for the amount, his or her heirs, successors, or assigns.

History.—Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “to the excess moneys” for “thereto” after “the respective parties” in the second sentence, substituted “the Controller” for “the State Treasurer” after “excess moneys with” in the third sentence, and substituted “his or her” for “his” throughout the text.

Article 7. Payment on Termination of Business and Successor’s Liability *

- § 38561. Withholding from purchase price by successor to cover liability.
- § 38562. Liability of purchaser.
- § 38563. Certificate issuance after payment.
- § 38564. Notice of successor liability.
- § 38565. Security held by the board at time of business termination.

38561. Withholding from purchase price by successor to cover liability. If any person liable for any amount under this part sells out his or her business or quits the business, the person’s successors or assigns shall

* Article 7 added by Stats. 1985, Ch. 186, effective January 1, 1986.

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withhold sufficient of the purchase price to cover the amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

38562. Liability of purchaser. If the purchaser of a business fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than 90 days after receiving the request, or 90 days from the date of the sale of the business, whichever period expires later, the board shall either issue the certificate or mail notice to the purchaser, at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate. Failure of the board to mail the notice will release the purchaser from any further obligation to withhold from the purchase price as above provided. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business.

History.—Stats. 1991, Ch. 236, in effect July 29, 1991, added “from the” after “withhold” in the first and third sentences; substituted “last date upon” for “time within” after “The”, and substituted “be not later . . . the business” for “start to run at the time the person sells out his or her business or at the time that the determination against the person becomes final, whichever event occurs later” after “enforced shall” in the fourth sentence.

38563. Certificate issuance after payment. The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of this certificate, or after the payment of the amounts is secured to the satisfaction of the board. This security is not subject to the limitations contained in Section 38501.

38564. Notice of successor liability. The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 38441) of Chapter 5. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

38565. Security held by the board at time of business termination. If at the time a business is discontinued the board holds security pursuant to Section 38501 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, this security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the business is discontinued.

Article 8. Miscellaneous Provisions

- § 38571. Report of collections.
- § 38572. Cumulative remedies.
- § 38573. Authority of the board.
- § 38574. Liability upon termination, dissolution or abandonment of corporate business.
- § 38575. Agreements for debt collection services.
- § 38576. Written partnership agreements.

38571. Report of collections. The board shall report to the Controller the amount of collections under this part, and the Controller shall keep a record thereof.

History.—Stats. 1985, Ch. 186, in effect January 1, 1986, renumbered the section which was formerly numbered 38561.

38572. Cumulative remedies. The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or Attorney General constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

History.—Stats. 1985, Ch. 186, in effect January 1, 1986, renumbered the section which was formerly numbered 38562.

38573. Authority of the board. In all proceedings under this chapter the board may act on behalf of the people of the State of California.

History.—Stats. 1985, Ch. 186, in effect January 1, 1986, renumbered the section which was formerly numbered 38563.

38574. Liability upon termination, dissolution, or abandonment of corporate business. (a) Upon termination, dissolution, or abandonment of a corporate business, any officer or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation in complying with any requirement of this part, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if that officer or other person willfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to this part.

(b) The officer or other person shall be liable only for taxes which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subdivision (a), plus interest and penalties on those taxes.

(c) For purposes of this section, “willfully fails to pay or cause to be paid” means that the failure was the result of an intentional, conscious, and voluntary course of action.

(d) The sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 38401) and Chapter 6 (commencing with Section 38501).

History.—Added by Stats. 1985, Ch. 186, in effect January 1, 1986.

38575. Agreements for debt collection services. (a) For the purpose of collecting taxes, interest, additions to tax, and penalties, the board may enter into agreements with one or more private persons, companies, associations, or corporations providing debt collection services outside this

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state with respect to the collection of taxes, interest, additions to tax, and penalties. The agreements may provide, at the discretion of the board, the rate of payment and the manner in which compensation for services shall be paid. The compensation shall not be added to the amount required to be collected by the collection agency or provider of debt collection services from the tax debtor. The board shall provide the necessary information for the contractor to fulfill its obligation under the agreement.

(b) With the approval of the board, the contractor may, as part of the collection process, refer the tax debt for litigation by its legal representatives in the name of the board.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

38576. Written partnership agreements. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of registration, the timber owner furnishes the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

CHAPTER 7. OVERPAYMENTS AND REFUNDS

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| Article 1. | Claim for Refund. §§ 38601–38607. |
| 2. | Suit for Refund. §§ 38611–38617. |
| 3. | Recovery of Erroneous Refunds. §§ 38621–38624. |
| 4. | Cancellations. § 38631. |

Article 1. Claim for Refund

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| § 38601. | Credits and refunds. |
| § 38602. | Claim; limitation period. |
| § 38602.5. | Filing extension; disability. |
| § 38603. | Form and content of claim. |
| § 38604. | Effect of failure to file claim. |
| § 38605. | Notice of action on claim. |
| § 38606. | Interest. |
| § 38607. | Disallowance of interest; waiver. |

38601. Credits and refunds. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1979, Ch. 516, in effect January 1, 1980, substituted “five” for “one” and “(\$5,000)” for “(\$1,000)” in the first sentence of the second paragraph. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in the second paragraph. Stats. 1988, Ch. 1029, in effect January 1, 1989, added “or her” after “his” in the first paragraph, substituted “fifty” for “fifteen” after “exceeding, substituted “50,000” for “15,000” after “dollars”, and added “or her” after “his” in the second paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, certify” for “and shall certify to the State Board of Control” after “records of

the board", substituted ", and credit" for ". If approved by the State Board of Control" after "by whom paid" in the first sentence; added the second sentence; and deleted the second paragraph which read: "In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his successors, administrators, or executors."

38602. Claim; limitation period. (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the last day of the month following the close of the quarterly period for which the overpayment was made, or, with respect to determinations made under Article 2, 3 or 4 of Chapter 5 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within such period. No credit shall be approved by the board after the expiration of such period unless a claim for credit is filed with the board within such period, or unless the credit relates to a period for which a waiver is given pursuant to Section 38419.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 38419 if a claim therefor is filed with the board before the expiration of the period agreed upon.

38602.5. Filing extension; disability. (a) The limitation period specified in Section 38602 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

38603. Form and content of claim. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

38604. Effect of failure to file claim. Failure to file a claim within the time prescribed in this article constitutes a waiver of any demand against the state on account of overpayment.

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38605. Notice of action on claim. Within 30 days after disallowing any claim in whole or in part the board shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

38606. Interest. Interest shall be paid upon any overpayment of any amount of tax at the adjusted annual rate established pursuant to Section 19521 from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.—Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted “adjusted annual rate established pursuant to Section 19269” for “rate of 1 percent per month” after “tax at the” in the first paragraph. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “Section 19521” for “Section 19269” after “established pursuant to” in the first sentence; added “as follows” after “shall be paid”, substituted “he or she” for “he” in subdivision (a).

Note.—Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

38607. Disallowance of interest; waiver. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

Article 2. Suit for Refund

- § 38611. Enjoining collection forbidden.
- § 38612. Necessity of refund claim.
- § 38613. Action for refund; limitation.
- § 38614. When refund claim not acted upon.
- § 38615. Disposition of amount of judgment.
- § 38616. Interest.
- § 38617. Judgment for assignee forbidden.

38611. Enjoining collection forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected.

38612. Necessity of refund claim. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been

erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed pursuant to Article 1 (commencing with Section 38601).

History.—Stats. 1987, Ch. 498, in effect January 1, 1988, added “(commencing with Section 38601)” after “Article 1” in the first sentence.

38613. Action for refund; limitation. Within 90 days after the mailing of the notice of the board’s action upon a claim filed pursuant to Article 1 (commencing with Section 38601), the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any city or city and county of this state in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of alleged overpayments.

History.—Stats. 1982, Ch. 454, in effect January 1, 1983, deleted “of this chapter” after “Article 1” in the first paragraph. Stats. 1987, Ch. 498, in effect January 1, 1988, added “(commencing with Section 38601)” after “Article 1” in the first sentence.

38614. When refund claim not acted upon. If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

38615. Disposition of amount of judgment. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any timber yield tax or timber reserve fund tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

Attorney’s Fees.—Indian tribe’s challenge to application of tax to non-Indian purchasers of tribal timber fell outside scope of federal civil rights statute (42 U.S.C.A. Sec. 1983), and tribe was not entitled to attorney’s fees as prevailing party (42 U.S.C.A. Sec. 1988). While right to tribal self-government qualified as substantial claim, it was protected by treaty and federal judicial decisions, not specifically grounded in a constitutional provision or federal statute. *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657.

38616. Interest. In any judgment, interest shall be allowed at the adjusted annual rate established pursuant to Section 19521 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted “adjusted annual rate established pursuant to Section 19269” for “rate of 12 percent per annum” after “allowed at the”. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “Section 19521” for “Section 19269” after “established pursuant to”.

Note.—Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

38617. Judgment for assignee forbidden. A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

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Article 3. Recovery of Erroneous Refunds

- § 38621. Erroneous refunds; actions.
- § 38622. Place of trial.
- § 38623. Rules of procedure, etc.
- § 38624. Erroneous refund-interest relief.

38621. Erroneous refunds; actions. (a) The Controller may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed pursuant to this part. In recovering any erroneous refunds or credits, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 38411) or Article 4 (commencing with Section 38431) of Chapter 5. Except in the case of fraud, the determination shall be made within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision letter designation (a) before first paragraph, and substituted "that" for "which" after "or part thereof" twice therein; and added subdivision (b).

38622. Place of trial. The action shall be tried in the County of Sacramento unless the court with the consent of the Attorney General orders a change of place of trial.

38623. Rules of procedure, etc. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

38624. Erroneous refund-interest relief. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 38621, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 38621 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 4. Cancellations

- § 38631. Cancellation of determinations.

38631. Cancellation of determinations. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the

determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1981, Ch. 947, in effect January 1, 1982, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” after “excess of” in the first sentence and after “exceeding” in the third sentence. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in first and third sentences. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty” for “fifteen” and substituted “50,000” for “15,000” in the first and third sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, added commas after “records” and “was made”; substituted “, certify” for “and certify to the State Board of Control” after “in its records”, substituted “, and” for “. If the State Board of Control approves, it shall” after “determination was made” in the first sentence; deleted former third sentence which read, “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board.” and added new third sentence. Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount” in the first sentence.

CHAPTER 8. ADMINISTRATION

- § 38701. Enforcement by board; rules and regulations.
- § 38702. Employees and representatives of board.
- § 38703. Records.
- § 38704. Examination of records.
- § 38705. Divulging of information forbidden.
- § 38706. Assessors’ access to board records.
- § 38707. Confidentiality; paid return preparers.
- § 38708. Fee and expense reimbursement; unreasonable staff action.

38701. Enforcement by board; rules and regulations. The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the application, administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

38702. Employees and representatives of board. The board may employ accountants, auditors, appraisers, investigators, assistants, and clerks necessary for the efficient administration of this part and may designate representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this part or other laws of this state upon the board.

38703. Records. Every timber owner shall keep such records, receipts, invoices, and other pertinent papers in such form as the board may require by rules or regulations.

38704. Examination of records. The board or any person authorized in writing by it may examine the books, papers, records, and timber of any timber owner or timber operator as defined in Section 4526.5 of the Public Resources Code and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

38705. Divulging of information forbidden. Except as provided in Sections 38402 and 38706, it is unlawful for the board or any person having an administrative duty under this part to make known in any manner

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whatever the business affairs, operations, or any other information pertaining to any timber owner or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

History. — Stats. 1979, Ch. 387, in effect January 1, 1980, substituted "Sections" for "Section" and added "and 38706" after "38402" in the first sentence.

38706. Assessors' access to board records. Upon written request of the assessor of any county containing timber, the board shall permit the assessor, or any duly authorized deputy or employee of such assessor, to examine any records pertaining to the county of such assessor which are maintained by the board under this part. It is unlawful for the assessor or any other person examining records pursuant to this section to make known in any manner whatever the business affairs, operations or any other information pertaining to any timber owner or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, loans, expenditures, or any particular thereof, set forth or disclosed in any return, except that any appraisal data, including "market data" as defined in Section 408, may be disclosed to any other assessor. Any assessor who unlawfully discloses information of any timber owner or any other person required to report to the board or pay a tax pursuant to this part shall forfeit one thousand dollars (\$1,000) to the county, to be recovered on his official bond in an action brought in the name of the people by the Attorney General, when directed to do so by the board.

History. — Added by Stats. 1979, Ch. 387, in effect January 1, 1980.

38707. Confidentiality; paid return preparers. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 5 of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

38708. Fee and expense reimbursement; unreasonable staff action. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or denial of a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) This section shall be operative for claims filed on or after January 1, 2001.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 9. VIOLATIONS AND RES JUDICATA

§ 38801.	Criminal penalties. [Repealed.]
§ 38801.	Criminal penalties.
§ 38802.	Criminal penalties. [Repealed.]
§ 38802.	Criminal penalties.
§ 38803.	Violation of law. [Repealed.]
§ 38803.	Violation of law.
§ 38804.	Statute of limitations.
§ 38805.	Res judicata.

38801. Criminal penalties. [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

38801. Criminal penalties. Any timber owner or other person who fails or refuses to furnish any return required to be made, or who fails or

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refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 38803.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

Note.—Section 42 of Stats. 1987, Ch. 498, provided that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

38802. Criminal penalties. [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

38802. Criminal penalties. Any person required to make, render, sign, or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination required by law to be made of an amount due is guilty of a misdemeanor punishable as provided in Section 38803.

History.—Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

Note.—Section 42 of Stats. 1987, Ch. 498, provided that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

38803. Violation of law. [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

38803. Violation of law. Any violation of this part by any person is a misdemeanor. Each offense shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000), or imprisonment not exceeding one year in the county jail, or both the fine and imprisonment.

History.—Added by Stats. 1987, Ch. 498, effective January 1, 1988.

38804. Statute of limitations. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense.

38805. Res judicata. In the determination of any case arising under this part the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

CHAPTER 10. DISPOSITION OF PROCEEDS

- § 38901. Collection and deposit.
- § 38902. Timber tax reserve fund. [Repealed.]
- § 38903. Timber tax fund.
- § 38903.1. Interest; deposit in timber tax fund. [Repealed.]
- § 38904. Appropriations from timber tax fund.
- § 38905. Allocations by Controller; timber tax fund. [Repealed.]
- § 38905.1. Allocations by Controller; timber tax fund.
- § 38906. Allocation by Controller; timber tax reserve fund. [Repealed.]
- § 38907. Certification by Controller.
- § 38908. Disbursements by local governmental entities.

38901. Collection and deposit. All taxes, interest and penalties imposed and all amounts of tax required to be paid under this part shall be

made in remittances to the State Board of Equalization and shall be deposited in the State Treasury as provided in this chapter.

38902. Timber tax reserve fund. [Repealed by Stats. 1984, Ch. 678, in effect January 1, 1985.]

38903. Timber tax fund. (a) All taxes, interest, penalties and other amounts paid or collected pursuant to this part on or before July 31, 1983, except taxes paid or collected pursuant to Section 38301, shall be deposited in the Timber Tax Fund, which is hereby created.

(b) On and after August 1, 1983, all taxes, interest, penalties, and other amounts paid or collected pursuant to this part shall be deposited in the Timber Tax Fund.

History.—Stats. 1982, Ch. 1058, in effect January 1, 1983, deleted “, except the amounts paid or collected pursuant to Section 38301” after “part”. Stats. 1983, Ch. 1281, in effect September 30, 1983, added the subdivision letters, added “on or before . . . Section 38301” after “part” in subdivision (a), and added subdivision (b).

38903.1. Interest; deposit in timber tax fund. [Repealed by Stats. 1984, Ch. 678, in effect January 1, 1985.]

38904. Appropriations from timber tax fund. The money in the Timber Tax Fund is appropriated as follows:

(a) To reimburse the General Fund for funds advanced for costs incurred by the board in administration of this part as follows:

(1) Four hundred sixty-seven thousand nine hundred thirty dollars (\$467,930) for fiscal years 1975–76 and 1976–77.

(2) Amounts identified and approved in subsequent fiscal years as approved in the Budget Bill. One-half of this amount shall be reimbursed to the General Fund between November 1 and November 10, and the remaining one-half between May 1 and May 10. In the event that not all funds approved in the Budget Bill are actually expended by the board, then in the succeeding fiscal year, the amount to be reimbursed to the General Fund between November 1 and November 10 shall be reduced by an amount equal to the unexpended appropriation of the preceding fiscal year.

(b) To reimburse the General Fund for funds advanced for costs incurred by the State Forester in administration of Section 4582.8 of the Public Resources Code as follows:

(1) Thirteen thousand five hundred dollars (\$13,500) for fiscal years 1975–76 and 1976–77.

(2) Amounts identified and approved in subsequent fiscal years as approved in the Budget Bill.

(c) To the Controller to allocate pursuant to Sections 38905 and 38905.1.

(d) To pay refunds authorized by this part of taxes imposed pursuant to Section 38115 and interest, penalties, and other amounts paid or collected pursuant to this part and deposited in the Timber Tax Fund.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “allocate” for “allocated” in subdivision (c) and added subdivision (d). Stats. 1978, Ch. 1109, in effect September 26, 1978; substituted “four hundred sixty-seven thousand nine hundred thirty dollars (\$467,930)” for “five hundred twenty-nine thousand eight hundred fourteen dollars (\$529,814)” in subsection (a)(1); substituted “Budget Bill” for “normal budget process” in the first sentence and added the second sentence of subsection (a)(2); substituted “years” for “year” in subsection (b)(1); and substituted “in” for “if” and “Budget Bill” for “normal budget process” in subsection (b)(2). Stats. 1982, Ch. 1058, in effect January 1,

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1983, substituted "Sections 38905 and 38905.1" for "Section 38905" after "pursuant to" in subdivision (c). Stats. 1997, Ch. 940 (SB 1105), in effect January 1, 1998, substituted "between November 1 and November 10," for "on November 30" after "General Fund", substituted "between May 1 and May 10" for "on May 31" after "remaining one-half" in the second sentence, and substituted "between November 1 and November 10," for "on November 30" after "General Fund" in the third sentence of paragraph (2) of subdivision (a).

38905. Allocations by Controller; timber tax fund. [Repealed by Stats. 1982, Ch. 1058, in effect January 1, 1983, operative August 1, 1983.]

38905.1. Allocations by Controller; timber tax fund. (a) Commencing with the 1983–84 fiscal year, the Controller shall, pursuant to subdivision (c) of Section 38904, on November 30 and May 31 of each fiscal year, transmit to county treasurers the balance that existed in the Timber Tax Fund on the preceding November 10 or May 10, respectively, in accordance with the following allocation schedule:

(1) For the 1983–84 fiscal year, 50 percent of the balance in Timber Tax Fund shall be transmitted to county treasurers based on the annual yield tax revenue guarantee certified for each county pursuant to subdivision (c) or (e) of Section 27423 of the Government Code. The remaining 50 percent of the balance in the fund shall be transmitted to county treasurers in the same proportion that the balance to be transmitted was generated from each county, as certified by the State Board of Equalization.

(2) For the 1984–85 fiscal year and each fiscal year thereafter, 100 percent of the balance in the fund shall be transmitted to county treasurers in the same proportion that the balance to be transmitted was generated from each county, as certified by the State Board of Equalization.

(b) Upon receipt of funds pursuant to subdivision (a), the county auditor shall within 10 days distribute the funds among the jurisdictions (as defined in Section 95) within the county in the same proportion that each jurisdiction's minimum revenue guarantee, determined pursuant to Section 27423 of the Government Code, bears to the total of all those amounts for all jurisdictions within the county.

(c) It is the intent of the Legislature that the provisions of subdivision (a) shall provide a final and conclusive disposition of the problem of allocating yield tax revenues among counties entitled to those revenues.

History.—Added by Stats. 1982, Ch. 1058, in effect January 1, 1983. Stats. 1984, Ch. 678, in effect January 1, 1985, substituted "as" for "or" after "county," in subsection (2) of subdivision (a). Stats. 1996, Ch. 248, in effect January 1, 1997, substituted "the balance that existed in the Timber Tax Fund on the preceding November 10 or May 10, respectively," for "the balance in the Timber Tax Fund on those dates," after "to county treasurers" in the first sentence of subdivision (a).

Note.—Section 10 of Stats. 1982, Ch. 1058, provided that with regard to community college funding from timber tax revenues, it is the intent of the Legislature that the community college funding provisions for the 1983–84 fiscal year and each fiscal year thereafter shall include the following provisions:

(a) The base fiscal year revenues for each district shall include the amount of timber yield tax minimum revenue guarantee, as certified pursuant to Section 27423 of the Government Code.

(b) For purposes of determining the amount of the state's general apportionment, the amount of timber yield tax revenue shall be considered local revenue and subtracted, along with property tax revenues and motor vehicle license fees, from the total revenues of the district.

38906. Allocation by Controller; timber tax reserve fund. [Repealed by Stats. 1982, Ch. 1058, in effect January 1, 1983.]

38907. Certification by Controller. On or before December 2, 1978, and each December 1 each year thereafter to and including December 1,

1981, the Controller shall certify to the State Board of Equalization the amount necessary to restore any deficient allocations as provided for in subdivision (c) of Section 38905, plus the amount needed to bring the current balance of the Timber Tax Reserve Fund up to five million dollars (\$5,000,000).

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “1978” for “1979” and substituted “amount needed to bring the current balance of the Timber Tax Reserve Fund up to five million dollars (\$5,000,000).” for “difference between five million dollars (\$5,000,000) and the current balance of the Timber Tax Reserve Fund.”

38908. Disbursements by local governmental entities. Local governmental entities which are allocated funds pursuant to Section 38905 or 38905.1 may expend such funds without restriction.

History.—Stats. 1982, Ch. 1085, in effect January 1, 1983, substituted “38905.1” for “38906” before “may”.

REVENUE AND TAXATION CODE

DIVISION 1. PROPERTY TAXATION

PART 2. ASSESSMENT

CHAPTER 3. ASSESSMENT GENERALLY

Article 1.5. Valuation of Open-Space Land
Subject to an Enforceable Restriction

* * * * *

423.5. Valuation of timberland. When valuing open-space land which is enforceably restricted and used for the production of timber for commercial purposes, the county assessor shall not consider sales data on lands, whether or not enforceably restricted, but shall determine the value of such timberland to be the present worth of the income which the future harvest of timber crops from the land and the income from other allowed compatible uses can reasonably be expected to yield under prudent management. The value of timberland pursuant to this section shall be determined in accordance with rules and regulations issued by the board. In determining the value of timberland pursuant to this section, the board and the county assessor shall use the capitalization rate derived pursuant to subdivision (b) of Section 423. The ratio prescribed in Section 401 shall be applied to the value of the land determined in accordance with this section to obtain its assessed value.

For the purposes of this section, the income of each acre of land shall be presumed to be no less than two dollars (\$2), and the present worth of this income shall not be reduced by the value of any exempt timber on the land.

There shall be a rebuttable presumption that “prudent management” does not include use of the land for recreational use, as defined in subdivision (n) of Section 51201 of the Government Code, unless the land is actually devoted to such use.

History.—Added by Stats. 1969, p. 1705, operative March 1, 1970. Stats. 1970, p. 2877, in effect November 23, 1970, added “and the present worth of the income attributable to other allowed compatible uses of the land” to the first sentence and added the third paragraph. Stats. 1973, Ch. 369, p. 811, in effect January 1, 1974, added “and the income from other allowed compatible uses” after “timber crops from the land”, deleted “and the present worth of the income attributable to other allowed compatible uses of the land” and added “under prudent management” after “yield” in the first paragraph; and substituted the second paragraph for the former second paragraph dealing with conditions for imputing a two-dollar-per-acre minimum income. Stats. 1974, Ch. 311, p. 606, in effect January 1, 1975, substituted “which is enforceably restricted” for “subject to an enforceable restriction”, and substituted “enforceably restricted” for “subject to an enforceable restriction” in the first sentence of the first paragraph. Stats. 1984, Ch. 678, in effect January 1, 1985, deleted “the board, for purposes of surveys required by section 1815, and “after “purposes” in the first sentence.

423.9. Valuation of land zoned as timberland production. Land which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code and which is not under an open-space contract pursuant to Section 51240 of the Government Code shall be valued pursuant to Section 435.

History.—Added by Stats. 1976, Ch. 176, p. 319, in effect May 24, 1976. Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland.”

Article 1.7. Valuation of Timberland and Timber *

- § 431. Definitions.
- § 432. Adoption of rules or regulations.
- § 433. Notation of zoning on assessment roll.
- § 434. Instructions for grading timberland; grading.
- § 434.1. Rules for grading timberland; grading.
- § 434.2. Timber advisory committee.
- § 434.5. Value of timberland.
- § 434.6. Overpayment of property taxes; refunds or credits. [Repealed.]
- § 435. Valuation of timberland.
- § 436. Timber exempt from property taxation.
- § 437. Addition to assessed value of a taxing agency.

431. Definitions. For purposes of this article, the following terms have the following meaning:

(a) “Timber” means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned lands, including Christmas trees, but does not mean nursery stock.

(b) “Timberland” means land zoned pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code.

(c) “Timber Advisory Committee” means a standing committee appointed by the board composed of one representative of the Board of Equalization, one representative of the State Board of Forestry and Fire Protection, five assessors from the rate adjustment counties defined in Section 38105, and one member representing small-scale timber owners, and one member representing large-scale timber owners.

History.—Stats. 1998, Ch. 972 (SB 989), in effect January 1, 1999, added “”, the following terms have the following meaning” after “article” in the first sentence, and substituted “State Board of Forestry and Fire Protection,” for “Board of Forestry,” before “five assessors” in the first sentence of subdivision (c).

432. Adoption of rules or regulations. Any rule or regulation required to be adopted pursuant to this article shall be in compliance with procedures set forth for adoption of rules under the Administrative Procedure Act.

433. Notation of zoning on assessment roll. When land is zoned as timberland production a notation of such zoning shall be made on the assessment rolls by the words “Timberland Production Zone” or the initials “T.P.Z.”

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” and after “Timberland”.

434. Instructions for grading timberland; grading. On or before September 1, 1976, the board, after consultation with the Timber Advisory Committee, shall prepare instructions setting forth temporary criteria and procedures for grading timberland on the basis of its site quality and operability. Five general site quality classes shall be established. These classes shall be the same as those adopted by the State Board of Forestry and

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Fire Protection pursuant to subdivision (d) of Section 4528 of, and Section 4551 of, the Public Resources Code. Within each of the five site quality classes, appropriate classes of operability shall be established, based on factors, such as accessibility, topography, and legislative or administrative restraints. On or before December 31, 1979, these classes shall be designated as operative or inoperative. Commencing with January 1, 1980, the board shall determine appropriate designations of operability. On or before March 1, 1977, each assessor shall grade all timberland within the county on the basis of these instructions. The assessor's grading is subject to the appeals procedure established by law for other assessments, as provided in Chapter 4 (commencing with Section 721) of Part 2 and Chapter 1 (commencing with Section 1601) of Part 3.

History.—Stats. 1983, Ch. 1281, in effect September 30, 1983, substituted "factors such" for "such factors" after "based on" in the fourth sentence, and substituted "721)" for "751" before "of Part 2" and deleted "of this division" after "Part 3" in the eighth sentence. Stats. 1998, Ch. 972 (SB 989), in effect January 1, 1999, substituted "State Board of Forestry and Fire Protection" for "Board of Forestry" after "adopted by the" and added "of," after "Section 4528" in the third sentence.

434.1. Rules for grading timberland; grading. (a) On or before March 1, 1977, the board after consultation with the Timber Advisory Committee shall adopt rules setting forth final procedures for grading timberland on the basis of its site quality and operability. Such rules shall follow the format set forth in Section 434.

(b) On or before March 1, 1978, each assessor in accordance with rules set forth in subdivision (a) shall grade all timberland in his county. The assessor's grading is subject to the appeals procedure established by law for other assessments as provided in Chapter 1 (commencing with Section 1601) of Part 3.

434.2. Timber advisory committee. Within 30 days of the effective date of this section, the board shall appoint the timber advisory committee as defined in subdivision (c) of Section 431.

434.5. Value of timberland. (a) On March 1, 1984, for the Redwood Region and Pine-Mixed Conifer Region, and on January 1, 1985, for the Whitewood Subzone of the Redwood Region, and January 1 of each year thereafter, the value per acre of timberland zoned under the provisions of Section 51110 or Section 51113 of the Government Code shall be determined from the following schedule:

Redwood Region	
Site I.....	\$180
Site II	\$150
Site III	\$130
Site IV	\$114
Site V (and inoperable).....	\$ 35

Pine-Mixed Conifer Region

Site I.....	\$ 98
Site II	\$ 69
Site III	\$ 56
Site IV	\$ 39
Site V (and inoperable).....	\$ 23

Whitewood Subzone of the Redwood Region

Site I.....	\$130
Site II	\$ 95
Site III	\$ 80
Site IV	\$ 60
Site V (and inoperable).....	\$ 30

For purposes of this section:

(1) “Redwood Region” means all those timberlands located in Del Norte, Humboldt, Sonoma, Marin, Monterey, Santa Cruz, and San Mateo Counties and that portion of Mendocino County which lies west and south of the main Eel River.

(2) “Whitewood Subzone of the Redwood Region” means that timberland located within the Redwood Region within which the assessor has determined that redwood did not exist as a species in the composition of the original timber stand, or which has not been replanted with redwood for commercial purposes.

(3) “Pine-Mixed Conifer Region” means all other timberlands outside the Redwood Region.

When the assessor, pursuant to Section 434, designates a timberland parcel or portion thereof as inoperable, that timberland parcel or portion thereof shall be valued as if it is Site V.

(b) In 1985, the board shall determine the current value of timberland by the following process:

(1) For each fiscal year between July 1, 1979, and June 30, 1984, divide the total value of all timber harvested within the state, less miscellaneous forest products not reported by board foot volume, by the total volume of timber harvested, as reported pursuant to Section 38402. Average the five fiscal year values to obtain the five-year periodic immediate harvest value.

(2) For each fiscal year between July 1, 1978, and June 30, 1983, follow the same procedure as described in paragraph (1).

(3) Divide the value obtained by paragraph (1) by the value obtained by paragraph (2) to obtain the percentage change, rounded to the nearest one-tenth of 1 percent.

(4) Increase or decrease to the nearest dollar the full market values contained in subdivision (a) by one-half of the percentage change determined by paragraph (3).

(c) Beginning January 1, 1986, and each year thereafter, the board shall determine the current value of timberland using the same procedure as

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described in subdivision (b), except that this adjustment shall be made to the prior year's adjusted values, and the five-year periodic immediate harvest values shall be successively one year more recent.

(d) The board shall certify the values determined pursuant to this section to the county assessors by November 30 of each year.

(e) The Legislature finds and declares that the foregoing values are consistent with the taxation of timberland used primarily for growing timber and that these values are consistent with the intent of subdivision (j) of Section 3 of Article XIII of the Constitution.

History.—Stats. 1977, Ch. 940, in effect January 1, 1978, substituted "subdivision (j) of Section 3" for "Section 3j" in the third paragraph of subdivision (a). Stats. 1978, Ch. 1109, in effect September 26, 1978, substituted "for the 1977–78 fiscal year" for "and March 1 of each year thereafter, up to and including March 1, 1979," in the first paragraph of subdivision (a), and deleted the former third paragraph thereof; substituted subdivision (b) for former subdivision (b); added subdivisions (c), (d), and (e); relettered former subdivisions (c), (d), (e), (f), and (g) as (f), (g), (h), (i), and (j), respectively; and added subdivisions (k) and (l). Stats. 1979, Ch. 242, in effect July 10, 1979, substituted "and March 1 of each year thereafter, up to and including March 1, 1979" for "for the 1977–78 fiscal year", and added "per acre" after "valued" in subdivision (a); deleted former subdivisions (b), (c) and (d); and relettered subdivisions (e), (f), (g), (h), (i), (j), (k), and (l) as (b), (c), (d), (e), (f), (g), (h), and (i), respectively. Stats. 1982, Ch. 1489, in effect January 1, 1983, in addition to making a number of grammatical changes throughout this section, substituted "production" for "preserve" before each "zone", deleted "the provisions of" after "pursuant to" in the third sentence of subdivision (b), substituted "production" for "preserve" after "timberland" in the second sentence of subdivision (d)(2), and deleted "of this subdivision" after "paragraph (2)" in the second paragraph of subdivision (f). Stats. 1983, Ch. 1198, in effect January 1, 1984, substituted the first sentence of subdivision (a) and increased schedule values for "On March 1, 1977, and March 1 of each year thereafter, up to including March 1, 1979, timberland shall be valued per acre according to the following schedule:" and previous schedule values; substituted subdivisions (b), (c), and (d) for former subdivisions (b), (c), (d), (e), (f), (g), and (h); and relettered former subdivision (i) as subdivision (e). Stats. 1984, Ch. 634, in effect January 1, 1985, added "for the Redwood Region and Pine-mixed Conifer Region, and on January 1, 1985, for the Whitewood subzone of the Redwood Region," after "March 1, 1984," in the first sentence of subdivision (a); substituted "new schedule of values" for former values for Redwood Region and for Pine-mixed Conifer Region; added "For purposes of this section:" and subsections (1), (2) and (3) thereafter. Stats. 1997, Ch. 940 (SB 1105), in effect January 1, 1998, substituted "January 1" for "March 1" before "of each year" in the first sentence of subdivision (a), substituted "this" for "such" after "except that" in the first sentence of subdivision (c), and substituted "November 30" for "January 10" in the first sentence of subdivision (d).

Note.—Secs. 2 and 3 of Stats. 1984, Ch. 634, provided no payment by state to local governments because of this act.

Modified productivity approach.—As used in subdivision (f)(3), "immediate harvest value" refers to both young growth and old growth, and "20 quarters" means 20 quarters. Thus, property tax rule 1025 was valid insofar as certain timberland values for the pine-mixed conifer region were based upon an immediate harvest value of both young growth and old growth, but it was invalid to the extent that such values were based upon such an immediate harvest value averaged for the previous 10 rather than 20 quarters. *Soper-Wheeler Co. v. State Board of Equalization*, 124 Cal.App.3d 913.

Unit valuation.—The phrase, "the same legal ownership" as used in property tax rule 41A(1) may be broadly interpreted so that various timber tracts recorded to different owners may be assessed as a unit once a parcel partnership of the different record owners is factually established. *Cochran v. Board of Supervisors*, 85 Cal.App.3d 75.

434.6. Overpayments of property taxes; refunds or credits. [Repealed by Stats. 1991, Ch. 646, in effect January 1, 1992.]

435. Valuation of timberland. (a) In preparing the assessment roll for the 1984–85 fiscal year and each fiscal year thereafter, the assessor shall use as the value of each parcel of timberland the appropriate site value pursuant to Section 434.5 plus the value, if any, attributable to existing, compatible, nonexclusive uses of the land. Assessments of values attributable to compatible uses determined in accordance with this part are subject to the appeals procedure established by law for other assessments.

(b) Nothing in this article shall prevent the assessor in valuing timberland from taking into consideration the existence of any mines, minerals, and quarries in or upon the land being valued, including, but not limited to, geothermal resources and oil, gas, and other hydrocarbon substances.

(c) The provisions of this article shall not apply to any structure on the land being valued or to an area of reasonable size used as a site for approved compatible uses.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, added the subdivision letters, added second sentence to subdivision (a), and substituted “the sum of the values derived for each parcel pursuant to this section, to obtain the assessed value of each parcel” after “401 to” for “obtain its assessed value. Assessments of values attributable to compatible uses determined in accordance with this part are subject to the appeals procedure established by law for other assessments in subdivision (d).” Stats. 1978, Ch. 1207, in effect January 1, 1979, operative January 1, 1981, deleted subdivision (d). Stats. 1983, Ch. 1198, in effect January 1, 1984, substituted “1984–85” for “1977–78” before “fiscal” and “site value” for “grade value certified to him by the board,” after “appropriate” in the first sentence of subdivision (a).

436. Timber exempt from property taxation. On the lien date for the 1977–78 fiscal year and thereafter, all timber on both privately and publicly owned lands shall be exempt from property taxation, including possessory interest taxation, and shall not be assessed for taxation purposes. Nothing herein shall preclude the assessment of trees standing on land not zoned as timberland production under this article for purposes of property taxation based on their aesthetic or amenity value.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in the second sentence.

437. Addition to assessed value of a taxing agency. Whenever the debt limit of a taxing agency is based wholly or in part on the assessed value of the agency, there shall be added to such assessed value the assessed valuation equivalents of revenue amounts certified pursuant to Section 27423 of the Government Code.

The assessed valuation equivalents for revenue amounts certified pursuant to Section 27423 of the Government Code shall be derived by multiplying such amounts by a factor of 100 and dividing the product by the secured tax rate for the prior year.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “38905” for “38906” in the first paragraph. Stats. 1980, Ch. 1208, in effect January 1, 1981, substituted “38906” for “38905” after the second “Section” in the first paragraph and added the last paragraph. Stats. 1984, Ch. 678, in effect January 1, 1985, deleted “and distributed pursuant to Section 38906 of the Revenue and Taxation Code” after “Government Code” in the first paragraph; deleted “and distributed pursuant to Section 38905 of the Revenue and Taxation Code” after “Government Code” in the second paragraph; and deleted the former third paragraph.

GOVERNMENT CODE PROVISIONS

TITLE 3. GOVERNMENT OF COUNTIES

DIVISION 2. OFFICERS

PART 3. OTHER OFFICERS

CHAPTER 8. ASSESSOR

* * * * *

27423. Determination of average annual assessed value attributable to timber. (a) On or before May 1, 1977, the assessor of each county for the local roll and the State Board of Equalization for the board roll shall determine the annual assessed value attributable to timber, as defined in subdivision (a) of Section 431 of the Revenue and Taxation Code, of each tax rate area for the 1972–73 to 1974–75 fiscal years, inclusive. Such values shall be from the corrected, equalized assessment roll for each such year, including escape assessments subsequently added to the roll. Escape assessments determined subsequent to June 30, 1975, for any of the three fiscal years specified shall be reported to the county auditor who shall certify to the Controller a revision in the amounts of average annual property tax revenue attributable to timber for each affected taxing jurisdiction on or before July 15, 1977, and July 15 of each year thereafter.

(b) Using the assessed values determined pursuant to subdivision (a), on or before June 1, 1977, the auditor of each county shall determine the average annual property tax revenues attributable to timber of each taxing agency for the 1972–73 to 1974–75 fiscal years, inclusive; provided, that if a taxing agency was in existence for less than the entire period, the average for such agency shall be determined by dividing the appropriate amount of property tax revenues by either one year or two years, whichever figure corresponds most nearly to the duration of existence of the agency within such period.

If the average value of the secured roll of a community college district which is attributable to timber over the period of fiscal years 1972–73 to 1974–75, inclusive, meets or exceeds 20 percent, then the auditor shall use a rate which when multiplied by that district’s average annual assessed value attributable to timber will produce an amount equivalent to the total amount of property taxes raised by that district in the 1976–77 fiscal year.

For purposes of this section, “average annual property tax revenue attributable to timber” of each school district which levied an areawide tax rate in one or more of fiscal years 1972–73 to 1974–75, inclusive, shall be the product of (1) the amount of money the district received as its reallocation from the areawide fund (not the amount of its own contribution raised from its actual areawide tax rate) for each such fiscal year, and (2) a factor produced by the amount of annual assessed value attributable to timber divided by the amount of all assessed value, within the school district, for each such fiscal year.

Each county auditor shall certify to the Controller a list of this amount for each taxing agency in the county and the total of all such amounts for the county. The auditor shall keep such records for each tax rate area as necessary to make distribution of funds pursuant to Section 38906 of the Revenue and Taxation Code.

(c) The Controller may require that all information pertinent to subdivisions (a) and (b) be retained and may inspect all calculations of the county assessor and county auditor. The Controller or the board may adjust and correct any calculation deemed to be inaccurate. The sum of each county's calculations as adopted by the Controller shall be known as that county's "annual yield tax revenue guarantee", and shall be certified to the county auditor on or before August 15, 1977.

(d) On or before July 15, 1977, and July 15 of each year thereafter, the auditor shall certify to the Controller the new or revised amount of property tax revenue attributable to timber for each taxing agency which, effective after July 1 of the preceding calendar year and on or before July 1 of the current calendar year, either (1) underwent "governmental reorganization," as described in Section 2295 of the Revenue and Taxation Code, or (2) underwent "functional consolidation," as described in Section 2305 of the Revenue and Taxation Code, or (3) gained approval from its voters to levy an additional property tax rate, effective with the next succeeding fiscal year.

For purposes of this subdivision, the average annual property tax revenue attributable to timber for a taxing agency formed subsequent to June 30, 1975, shall be calculated as follows:

(1) The average annual assessed value attributable to timber shall be the sum of the values of the tax rate areas, as determined by the assessor or the board pursuant to subdivision (a), which correspond to the new agency's boundaries, as if that agency had actually existed during fiscal years 1972-73 to 1974-75, inclusive, and this sum shall be multiplied by

(2) A tax rate represented by 80 percent of the maximum tax rate the new taxing agency was authorized by the voters to levy in its first full year of operation.

For purposes of this subdivision, the average annual property tax revenue attributable to timber for a taxing agency formed prior to June 30, 1975, which annexes territory subsequent to that date, shall have added to it the sum of the values of the tax rate areas, as determined by the assessor or the board pursuant to subdivision (a) which corresponds to the territory which was annexed, multiplied by the average total tax rate levied during fiscal years 1972-73 to 1974-75, inclusive, by the taxing agency which annexed the territory.

For purposes of this subdivision, the average annual property tax revenue attributable to timber for a taxing agency which subsequent to June 30, 1975, has transferred to it by functional consolidation the responsibility of levying a property tax rate to pay the cost of a new service or program shall have added to it the sum of the average annual assessed value attributable to timber

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for that agency multiplied by the additional property tax rate to be incurred in the first year pursuant to the functional consolidation. For a taxing agency which subsequent to June 30, 1975, has transferred from it the responsibility of levying a property tax rate for a service or program, the average annual property tax revenue attributable to timber shall be reduced by the sum of the annual assessed value attributable to timber for that agency multiplied by the average tax rate levied by the taxing agency during fiscal years 1972–73 to 1974–75, inclusive, for the support of such service or program.

For purposes of this subdivision, when an additional property tax rate is approved by the voters of a taxing agency in the preceding fiscal year, such agency shall have its average annual property tax revenue attributable to timber revised in the same manner as for a functional consolidation in which responsibility for the funding of a new service or program is added; provided, that such revision will extend only for the same period of time as that authorized by the voters for the existence of the additional voted property tax rate.

(e) On or before August 15, 1977, and August 15 of each year thereafter, the Controller shall certify to each county auditor the revisions certified by the auditor pursuant to subdivision (a) or (d) in the average annual property tax revenue attributable to timber for one or more taxing agencies, to take effect in the current fiscal year. The Controller shall adjust and correct any calculation deemed to be inaccurate, prior to such certification. The amount added to or deducted from a county's previous annual yield tax revenue guarantee will be the property tax revenue attributable to timber, as certified to the Controller by the county auditor pursuant to subdivision (d). The revised annual yield tax revenue guarantee shall take effect for payments made to the county pursuant to subdivision (a) of Section 38905 of the Revenue and Taxation Code in the current fiscal year, and shall remain in effect until subsequent revision under this subdivision.

(f) Upon receipt of the amount certified by the Controller pursuant to subdivision (c) or (e), the county auditor shall within 10 days certify to each taxing agency its share of this amount, and shall deliver to the county treasurer a schedule of these amounts for all taxing agencies in the county, to govern distribution of moneys pursuant to subdivision (a) of Section 38905 of the Revenue and Taxation Code.

(g) For the purposes of this section, in the case of a change in the boundaries of a tax rate area, the assessor or the board shall determine the base year timber value by parcel in each tax rate area affected by the boundary change and the auditor shall apportion the property tax revenue attributable to timber according to this determination.

(h) For the purposes of this section "tax rate area" means a geographical area in which there is a unique combination of tax levies.

(i) For purposes of this section, a taxing agency is deemed to be in existence in any year in which the agency levies a property tax rate. Any taxing agency which was operational prior to June 30, 1975, but levied no

property tax rate, may subsequent to that date establish an average annual property tax revenue attributable to timber pursuant to subdivision (d), as a governmental reorganization, in the year next succeeding the year in which it first levies a property tax rate.

(j) For purposes of this section, when computing the property tax revenues attributable to timber for a school district which levied an areawide tax rate during one or more of fiscal years 1972–73 to 1974–75, inclusive, the county auditor shall in his computations of the revenues produced by such a rate use the revenues actually apportioned to the district from the county's areawide fund, and not the revenues raised from the levy of the areawide rate and contributed to the county's areawide fund by said district.

History.—Added by Stats. 1976, Ch. 176, p. 303, in effect May 24, 1976. Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “annual assessed value” for “average annual assessed value” in the first sentence and added second and third sentences of subdivision (a) and the proviso to subdivision (b) following the word “inclusive”. In subdivision (d), substituted “new or revised amount” for “amounts” and substituted the material following the phrase “for each taxing agency which for” was newly formed in the preceding fiscal year, and each taxing agency which was dissolved in the preceding fiscal year. For the purposes of this subdivision, the average annual assessed value attributable to timber for a taxing agency formed subsequent to June 30, 1976, shall be the sum of the values of the tax rate areas, as determined by the assessor pursuant to subdivision (a), which correspond to the agency's present boundaries, as if that agency had actually existed during fiscal years 1972–73 to 1974–75, inclusive, and the tax rate shall be that which the taxing agency was authorized to levy in the year the agency was formed. The Controller may adjust and correct any calculation deemed to be inaccurate. In subdivision (e) substituted the wording following “county auditor” in the first sentence for “of each county in which one or more taxing agencies were either newly formed or dissolved during the preceding fiscal year a revised annual yield tax revenue guarantee. The amount added to or deducted from a county's previous annual yield tax revenue guarantee will be the property tax revenue attributable to timber, as certified to the Controller by the county auditor pursuant to subdivision (d). The revised annual yield tax revenue guarantee shall take effect for payments made to the county pursuant to subdivision (a) of Section 38905 and subdivision (a) of Section 38906 of the Revenue and Taxation Code in the current fiscal year, and shall remain in effect until subsequent revision under this subdivision.” In subdivision (g) added “shall determine the base year timber value by parcel in each tax rate area affected by the boundary change and the auditor” and “this determination” for “the number of acres of timberland in each tax rate area affected by the boundary change.” and added subdivision (i). Stats. 1978, Ch. 1109, in effect September 26, 1978, substituted “If the average . . . inclusive” for “If twenty percent or more of the value of the secured roll of a community college district is attributable to timber in each of fiscal years 1972–73 to 1974–75, inclusive,” in the second paragraph of subdivision (b), added the third paragraph of subdivision (b), deleted “in the preceding fiscal year” and replaced it with “effective after July 1 of the preceding calendar year and on or before July 1 of the current calendar year, either” in subdivision (d), and added subdivision (j). Stats. 1982, Ch. 1058, in effect January 1, 1983, deleted “State” before “Controller” in the first sentence of the fourth paragraph of subdivision (b) and in the first sentence of subdivision (c), and deleted “and subdivision (a) of Section 38906” after “Section 38905” in the fourth sentence of subdivision (e) and in subdivision (f).

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GOVERNMENT CODE PROVISIONS

TITLE 5. LOCAL AGENCIES

DIVISION 1. CITIES AND COUNTIES

PART 1. POWERS AND DUTIES COMMON TO
CITIES AND COUNTIES

CHAPTER 6.7. TIMBERLAND *

- Article 1. General Provisions. §§ 51100–51104.
 2. Timberland Production Zones. §§ 51110–51119.5.
 3. Rezoning. §§ 51120–51121.
 4. Immediate Rezoning. §§ 51130–51134.
 5. Removal From Zone. §§ 51140–51146.
 6. Eminent Domain or Other Acquisition. §§ 51150–51155.

Article 1. General Provisions

- § 51100. Title.
 § 51101. Legislative findings.
 § 51102. Policy of state.
 § 51103. Legislative intent; inclusion of all qualifying timberland.
 § 51104. Definitions.

51100. Title. This chapter shall be known and may be cited as the California Timberland Productivity Act of 1982.

History.—Added by Stats. 1982, Ch. 1489, in effect January 1, 1983.

Construction.—A county's amendments to its zoning ordinance controlling the location of commercial timber harvesting were not preempted by state statutes (Public Resources Code Sections 4511–4628) governing the conduct of timber harvest operations. Although Public Resources Code Section 4516.5 expressly preempts local attempts to regulate the conduct of timber operations, the ordinance instead addressed where the operations could take place. Government Code Sections 51100–51155 contemplate that local zoning authority be exercised on those issues, and other pertinent legislation demonstrates the Legislature's intent to preserve local zoning authority over lands not designated as "timberland production zones." Neither was the ordinance preempted by implication. *Big Creek Lumber Company v. San Mateo County*, 31 Cal.App.4th 418.

51101. Legislative findings. The Legislature hereby finds and declares all of the following:

(a) The forest resources and timberlands of this state, together with the forest products industry, contribute substantially to the health and stability of the state's economy and environment by providing high quality timber, employment opportunities, regional economic vitality, resource protection, and aesthetic enjoyment.

(b) The state's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to urban and other uses and through pressures to restrict or prohibit timber operations when viewed as being in conflict with nontimberland uses.

(c) A continued and predictable commitment of timberland, and of investment capital, for the growing and harvesting of timber are necessary to

* Chapter 6.7 was added by Stats. 1976, Ch. 176, p. 305, in effect May 24, 1976. Secs. 20 and 21 thereof provided no payment by state to local governments because of this act.

ensure the long term productivity of the forest resource, the long-term economic viability of the forest products industry, and long-term stability of local resource-based economies.

History.—Added by Stats. 1982, Ch. 1489, in effect January 1, 1983. Stats. 1990, Ch. 1600, in effect January 1, 1991, added “regional economic vitality,” after “opportunities” in subdivision (a); and substituted “long-term” for “long term” after “the” in both places, substituted a comma for “and” after “resource,” and added “, and long-term stability of local resource-based economies” after “industry” in subdivision (c).

51102. Policy of state. (a) The Legislature further declares that to fully realize the productive potential of the forest resources and timberlands of the state, and to provide a favorable climate for long-term investment in forest resources, it is the policy of this state to do all of the following:

(1) Maintain the optimum amount of the limited supply of timberland to ensure its current and continued availability for the growing and harvesting of timber and compatible uses.

(2) Discourage premature or unnecessary conversion of timberland to urban and other uses.

(3) Discourage expansion of urban services into timberland.

(4) Encourage investment in timberlands based on reasonable expectation of harvest.

(b) The Legislature further declares that it is the policy of this state that timber operations conducted in a manner consistent with forest practice rules adopted by the State Board of Forestry and Fire Protection shall not be or become restricted or prohibited due to any land use in or around the locality of those operations.

History.—Added by Stats. 1982, Ch. 1489, in effect January 1, 1983. Stats. 1998, Ch. 972 (SB 989), in effect January 1, 1999, deleted “in order” after “declares that” in the first sentence and deleted “so as” after “timberland” in paragraph (1) of subdivision (a); and added “and Fire Protection” after “Forestry” in subdivision (b).

51103. Legislative intent; inclusion of all qualifying timberland. It is the intent of the Legislature to implement the policies of this chapter by including all qualifying timberland in timberland production zones.

History.—Added by Stats. 1982, Ch. 1489, in effect January 1, 1983.

51104. Definitions. As used in this chapter, unless otherwise apparent from the context:

(a) “Board” means the board of supervisors of a county or city and county, whether general law or chartered, which establishes or proposes to establish a timberland production zone pursuant to this chapter.

(b) “Contiguous” means two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the board or council, that they are manageable as a single forest unit.

(c) “Council” means the city council of a city, whether general law or chartered, which establishes or proposes to establish a timberland production zone pursuant to this chapter.

(d) “County” or “city” means the county or city having jurisdiction over the land.

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(e) “Timber” means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock.

(f) “Timberland” means privately owned land, or land acquired for state forest purposes, which is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.

(g) “Timberland production zone” or “TPZ” means an area which has been zoned pursuant to Section 51112 or 51113 and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, as defined in subdivision (h).

With respect to the general plans of cities and counties, “timberland preserve zone” means “timberland production zone.”

(h) “Compatible use” is any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, and shall include, but not be limited to, any of the following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use:

(1) Management for watershed.

(2) Management for fish and wildlife habitat or hunting and fishing.

(3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas.

(4) The erection, construction, alteration, or maintenance of gas, electric, water, or communication transmission facilities.

(5) Grazing.

(6) A residence or other structure necessary for the management of land zoned as timberland production.

(i) “Parcel” means that portion of an assessor’s parcel that is timberland, as defined.

(j) “Anniversary date” means the anniversary of the date on which zoning is established pursuant to Section 51112 or 51113 takes effect.

(k) “Tax rate area” means a geographical area in which there is a unique combination of tax levies.

(l) “Nonconforming use” means any use within a TPZ which lawfully existed on the effective date of zoning established pursuant to Sections 51112 and 51113, and continuing since that time, which is not a compatible use.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, deleted “a” in subdivision (j) between “which” and “zoning”. Stats. 1982, Ch. 1489, in effect January 1, 1983, renumbered the section which was formerly numbered 51100; substituted “production” for “preserve” after “timberland” in subdivisions (a) and (c); substituted “production” for “preserve” before, and added “or TPZ” after “zone” in the first paragraph, and added the second paragraph in subdivision (g); added “any of” after “limited to,” in the first sentence, and added subsection (6) in subdivision (h); and added subdivision (l).

Construction.—Land is “maintained for eventual harvest for forest product purposes” and “devoted to and used for growing or harvesting timber” where it is inherently capable of being so used or maintained and has not been rendered unsuitable for forest product purposes by prior activity. The definitions of timber and timberland herein are not to be measured by any one owner’s subjective intent. *Clinton v. Santa Cruz County*, 119 Cal.App.3d 927.

Article 2. Timberland Production Zones *

- § 51110. Parcels assessed for timber; notice and hearing; procedure.
- § 51110.1. Parcels not assessed for timber; notice and hearing; procedure.
- § 51110.2. Hearing; county or city planning commission.
- § 51110.3. Petition by landowner regarding timber production zoning.
- § 51111. Adoption of list of parcels zoned as timberland production.
- § 51112. Zoning of parcels as timberland production.
- § 51113. Subsequent zoning; hearing; procedure.
- § 51113.5. Additions to timberland production lands.
- § 51114. Term of zoning of parcels as timberland production lands.
- § 51115. Restricted use of parcels zoned as timberland production lands.
- § 51115.1. Presumption; parcels zoned as timberland production.
- § 51115.2. Nonconforming use; limitation.
- § 51115.5. Timber operations not nuisance; exceptions.
- § 51116. Authority of county or city to bring court enforcement action.
- § 51117. Recording with county recorder.
- § 51118. Assessment as timberland production lands.
- § 51119. Section 21151 of the Public Resources Code not applicable.
- § 51119.5. Size of parcels zoned as timberland production lands.

51110. Parcels assessed for timber; notice and hearing; procedure. (a) On or before September 1, 1976, the assessor shall assemble a list of all parcels, regardless of size, which as of the lien date in 1976, were assessed for growing and harvesting timber as the highest and best use of the land, including all such parcels or portions thereof under agricultural preserve contracts.

(b) On or before September 1, 1976, the assessor shall notify by mail, which is certified and with return receipt requested, owners of parcels listed under subdivision (a) that their land has been included in such a list. This notice shall be substantially in the following form:

To: (name of taxpayer)

Pursuant to the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act of 1976, _____ County must provide for the zoning of land used for growing and harvesting timber as timberland preserve zone (TPZ).

A TPZ is a 10-year restriction on the use of land, and will replace the use of agricultural preserves (Williamson Act contracts) on timberland. Land use under a TPZ will be restricted to growing and harvesting timber, and to compatible uses approved by the county (or city). In return, taxation of timberland under a TPZ will be based only on such restrictions in use.

To initiate this zoning procedure, the assessor has assembled a list (list “A”) of all those parcels assessed for property tax purposes for growing and harvesting timber as the highest and best use of the land as of March 1, 1976. The following parcels of your land have been included in this list “A”:

(legal description or assessor’s parcel no.)

* Article 2 heading was amended by Stats. 1982, Ch. 1489, in effect January 1, 1983.

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If you have one or more parcels listed above which you believe have a highest and best use other than growing and harvesting timber, you must submit to the assessor a written affidavit describing the intended use you have for this parcel(s), and do so before October 1, 1976. The assessor will then designate such parcel(s) as “contested” on the final list of these parcels which is submitted to the county board of supervisors (or city council) on October 15, 1976.

A public hearing will be held prior to March 1, 1977, for the consideration of zoning your parcel(s) as TPZ. You will be given at least 20 days’ notice of such hearing.

Under the Timber Yield Tax Law, all noncontested parcels included in the final list “A” will be zoned as TPZ unless the owner can demonstrate to the satisfaction of a majority of the full board (or council) that at least one of the following conditions exists:

- (i) That the parcel or parcels are not capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre; or
- (ii) That the current use of the parcel has changed subsequent to March 1, 1976, and that such use is no longer the growing and harvesting of timber, and is not compatible with the growing and harvesting of timber.

Parcels designated as “contested” which appear on list “A” will be zoned as TPZ unless the owner can demonstrate to the satisfaction of a majority of the full board (or council) that it would not be in the public interest for such parcels(s) to be zoned as TPZ. Parcels in list “A” not zoned as TPZ will receive an alternate zone, if no appropriate zone currently exists. “Contested” parcels not zoned as TPZ will be valued in the future on a higher and better use of the land.

Detailed information on the TPZ zoning process and the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act in general may be obtained from your county assessor’s office.

- (c) Upon notification pursuant to subdivision (b) owners of parcels listed pursuant to subdivision (a) may have one or more such parcels designated as “contested” in the following manner:

On or before October 1, 1976, the owner must notify the assessor in a written affidavit that such a parcel has the highest and best use which is not a compatible use for timberland, as determined by the board or council pursuant to Section 51111, and the owner shall state the intended use for such parcel.

Upon receipt of such affidavit, the assessor shall designate such parcels on the list to be submitted to the board or council pursuant to subdivision (d) as “contested”. In preparing the assessment roll for the 1977–78 fiscal year and each fiscal year thereafter, the assessor shall take into account the owner’s notice of higher and better use in determining the fair market value for such parcels, if such parcels are not zoned as timberland preserve.

(d) On or before October 15, 1976, the assessor shall submit to the board or council a list of all parcels, regardless of size, which as of the lien date in 1976, are assessed for growing and harvesting timber as the highest and best use of the land, including such parcels designated as “contested” pursuant to subdivision (c). This list shall be known as “list A”.

(e) On or before August 19, 1976, the State Board of Equalization shall submit to the county assessor for inclusion in list A those parcels on the board roll which are located in the county and which, as of the lien date in 1976, were assessed by the State Board of Equalization for growing and harvesting timber as the highest and best use of the land.

51110.1. Parcels not assessed for timber; notice and hearing; procedure. (a) On or before September 1, 1977, the assessor shall assemble a list of all parcels, which, as of the lien date in 1976, appeared in the judgment of the assessor to constitute timberland, but which were not assessed for growing and harvesting timber as the highest and best use of the land.

(b) On or before September 1, 1977, the assessor shall notify by mail, which is certified and with return receipt requested, owners of parcels listed under subdivision (a) that their land has been included in such a list. This notice shall be substantially in the following form:

To: (name of taxpayer)

Pursuant to the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act of 1976, _____ County must provide for the zoning of land used for growing and harvesting timber as timberland preserve zone (TPZ).

A TPZ is a 10-year restriction on the use of land, and will replace the use of agricultural preserves (Williamson Act contracts) on timberland. Land use under a TPZ will be restricted to growing and harvesting timber, and to compatible uses approved by the county (or city). In return, taxation of timberland under a TPZ will be based only on such restrictions in use.

As part of this zoning procedure, the assessor has assembled a list (list “B”) of all those parcels which appear to be land used for growing and harvesting timber, but which are not assessed for property tax purposes as this being the highest and best use of the land. The following parcels of your land have been included in this list “B”:

(legal description or assessor’s parcel no.)

A public hearing will be held prior to March 1, 1978, for the consideration of zoning your parcel(s) as TPZ. You will be given at least 20 days’ notice of such hearing.

Under the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act, all parcels included in this list “B” will be zoned as TPZ unless the owner can demonstrate to the satisfaction of a majority of the full board (or council) that

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it would not be in the public interest for such parcel(s) to be zoned as TPZ. Parcels on list “B” not zoned as TPZ will receive an alternate zone, if no appropriate zone currently exists.

Detailed information on the TPZ zoning process and the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act in general may be obtained from your county assessors office.

(c) On or before October 15, 1977, the assessor shall submit to the board or council a list of all parcels, which as of the lien date in 1976, appear to constitute timberland, but which are not assessed for growing and harvesting timber as the highest and best use of the land. This list shall be known as “list B”.

(d) On or before August 19, 1977, the State Board of Equalization shall submit to the county assessor, for inclusion in list B, those parcels on the board roll which are located in the county and which as of the lien date in 1976, appear to constitute timberland, but which were not assessed by the State Board of Equalization for growing and harvesting timber as the highest and best use of the land.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “parcel(s)” for “parcels” in fourth paragraph of subdivision (b).

51110.2. Hearing; county or city planning commission. The county or city planning commission shall hold a public hearing on parcels referred to it for review by the board or council pursuant to subdivision (d) of Section 51110 and subdivision (c) of Section 51110.1 according to Section 65854, and shall render its decision in the form of a written recommendation to the board or council according to Section 65855. The planning commission shall include in its recommendation to the board or council considerations as to the exact zoning boundaries to be drawn within each assessors parcel contained in list A or list B.

History.—Stats. 1983, Ch. 142, in effect January 1, 1984, deleted “of this code” after “65854” and after “65855” in the first sentence.

51110.3. Petition by landowner regarding timber production zoning. In the event that a landowner does not receive notice pursuant to subdivision (b) of Section 51110.1, such owner may prior to January 1, 1978, petition directly to the board or council to have a parcel owned by such person included on list “B”. Such owner must be able to demonstrate that on each such parcel a plan for forest management has been prepared, or approved as to content, by a registered professional forester prior to October 15, 1977. Such plan shall provide for the harvest of timber within a reasonable period of time, as determined by the preparer of the plan.

In the event that the board or council finds that the parcel does in fact have plans for forest management signed by a registered professional forester prior to October 15, 1977, the board or council shall include the parcel listed in the petition on list “B” without respect to acreage or size and shall consider these parcels under subdivision (c) of Section 51112.

History.—Added by Stats. 1977, Ch. 853, in effect September 17, 1977.

51111. Adoption of list of parcels zoned as timberland production.

On or before October 1, 1976, the board or council shall adopt a list and a detailed description of additional compatible uses for parcels zoned as timberland production.

History.—Stats. 1984, Ch. 678, in effect January 1, 1985, substituted “production” for “preserve” after “timberland”.

51112. Zoning of parcels as timberland production.

(a) On or before March 1, 1977, the board or council by ordinance, after the advice of the planning commission pursuant to Section 51110.2, and after public hearing, shall zone as timberland production all parcels appearing on list A submitted by the assessor pursuant to subdivision (d) of Section 51110 which are not designated as “contest,” unless it finds by a majority vote of the full body that a parcel or parcels are not devoted to and used for growing and harvesting timber or for growing and harvesting timber and compatible uses.

The basis for such a finding is limited to either of the following:

(1) The parcel is not in fact capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre;

(2) The use of the parcel has changed subsequent to the lien date in 1976, and that such use no longer meets the definition of timberland, or of compatible uses as defined and as adopted by the board or council pursuant to Section 51111.

(b) On or before March 1, 1977, the board or council by ordinance, after the advice of the planning commission pursuant to Section 51110.2, and after public hearing, shall zone as timberland production all parcels appearing on list A which are designated as “contested” pursuant to subdivision (c) of Section 51110, except those parcels which it finds by a majority vote of the full body to be in the public interest to exclude from such a zone.

(c) On or before March 1, 1978, the board or council by ordinance, after the advice of the planning commission pursuant to Section 51110.2, and after public hearing, shall zone as timberland production all parcels appearing on list B submitted by the assessor pursuant to subdivision (c) of Section 51110.1, except those parcels which it finds by a majority vote of the full body to be in the public interest to exclude from such a zone.

(d) On parcels excluded from the timberland production zone under this section, the board or council shall apply an alternate zone which is in conformance with the county general plan and whose primary use is other than timberland, if no such appropriate zone currently applies to such parcels.

(e) The owner of the land shall be given written notice at least 20 days prior to the hearing of the board or council, and notice of hearing shall be published pursuant to Section 6061 of this code, and shall include a legal description, or the assessor’s parcel number, of the land which is proposed to be included within the timberland production zone.

History.—Stats. 1984, Ch. 678, in effect January 1, 1985, substituted “production” for “preserve” after “timberland” throughout the section.

51113. Subsequent zoning; hearing; procedure.

(a) (1) An owner may petition the board or council to zone his or her land as timberland

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production. The board or council by ordinance, after the advice of the planning commission pursuant to Section 51110.2, and after public hearing, shall zone as timberland production all parcels submitted to it by petition pursuant to this section, which meet all of the criteria adopted pursuant to subdivision (c). Any owner who has so petitioned and whose land is not zoned as timberland production may petition the board or council for a rehearing on the zoning.

(2) This section shall not be construed as limiting the ability of the board or council to zone as timberland production any parcel submitted upon petition that is timberland, defined pursuant to subdivision (f) of Section 51104, and which is in compliance with the compatible use ordinance adopted by the board or council pursuant to Section 51111.

(b) The board or council, on or before March 1, 1977, by resolution, shall adopt procedures for initiating, filing, and processing petitions for timberland production zoning and for rezoning. The rules shall be applied uniformly throughout the county or city.

(c) On or before March 1, 1977, the board or council by ordinance shall adopt a list of criteria required to be met by parcels being considered for zoning as timberland production under this section. The criteria shall not impose any requirements in addition to those listed in this subdivision and in subdivision (d). The following shall be included in the criteria:

(1) A map shall be prepared showing the legal description or the assessor's parcel number of the property desired to be zoned.

(2) A plan for forest management shall be prepared or approved as to content, for the property by a registered professional forester. The plan shall provide for the eventual harvest of timber within a reasonable period of time, as determined by the preparer of the plan.

(3) (A) The parcel shall currently meet the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the forest practice rules adopted by the State Board of Forestry and Fire Protection for the district in which the parcel is located, or the owner must sign an agreement with the board or council to meet those stocking standards and forest practice rules by the fifth anniversary of the signing of the agreement. If the parcel is subsequently zoned as timberland production under subdivision (a), failure to meet the stocking standards and forest practice rules within this time period provides the board or council with a ground for rezoning of the parcel pursuant to Section 51121.

(B) Upon the fifth anniversary of the signing of an agreement, the board shall determine whether the parcel meets the timber stocking standards in effect on the date that the agreement was signed. Notwithstanding the provisions of Article 4 (commencing with Section 51130), if the parcel fails to meet the timber stocking standards, the board or council shall immediately rezone the parcel and specify a new zone for the parcel which is in conformance with the county general plan and whose primary use is other than timberland;

(4) The parcel shall be timberland, as defined in subdivision (f) of Section 51104.

(5) The parcel shall be in compliance with the compatible use ordinance adopted by the board or council pursuant to Section 51111.

(d) The criteria required by subdivision (c) may also include any or all of the following:

(1) The land area concerned shall be in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and shall be comprised of single or contiguous parcels of a certain number of acres, not to exceed 80 acres.

(2) The land shall be a certain site quality class or higher under Section 434 of the Revenue and Taxation Code, except that the parcel shall not be required to be of the two highest site quality classes.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, designated the first paragraph as (1) of subdivision (a) and added paragraph (2) thereof, and added the second paragraph of subdivision (c)(3) and added paragraphs (4) and (5) to the subdivision. Stats. 1982, Ch. 1489, in effect January 1, 1983, in addition to making numerous grammatical corrections throughout this section, substituted “production” for “preserve” after “timberland” wherever applicable; added “or her” after “his” in the first sentence of subdivision (a)(1) and substituted “51104” for “51100” after “Section” in subdivision (a)(2); deleted “below” after “subdivision (d)” in the second sentence of subdivision (c), substituted “shall” for “must” after “management” in the first sentence of subdivision (c)(2), deleted “such” after “signing of” in the first sentence and substituted “(commencing with Section 51130)” for “of this chapter” after “Article 4” in the second sentence of the second paragraph of subdivision (c)(3), and substituted “51104” for “51100” after “Section” in subdivision (c)(4); and substituted “80 acres” for “160 acres or one-quarter section” after “exceed” in subdivision (d)(1). Stats. 1998, Ch. 972 (SB 989), in effect January 1, 1999, deleted “After November 1, 1977” before “An owner” in the first sentence of paragraph (1), and substituted “that” for “, which” after “petition” in the first sentence of paragraph (2) of subdivision (a); lettered the first paragraph of paragraph (3) as subparagraph (A), added “and Fire Protection” after “Forestry” in the first sentence and deleted “then” after “subdivision (a),” in the second sentence therein, lettered the second paragraph of paragraph (3) as subparagraph (B) and added “that” after “the date” in the first sentence therein; substituted a period for “;” and “after “Section 51104” in the first sentence of paragraph (4) of subdivision (c); and substituted “not to” for “provided that such number required may not” after “acres,” in the first sentence of paragraph (1) and substituted “except” for “; provided,” after “Code” in the first sentence of paragraph (2) of subdivision (d).

51113.5. Additions to timberland production lands. (a) After March 1, 1977, an owner with timberlands in a timberland production zone pursuant to Section 51112 or 51113 may petition the board or council to add to his or her timberland production lands that meet the criteria of subdivisions (f) and (g) of Section 51104 and that are contiguous to the timberland already zoned as timberland production. Section 51113 shall not apply to these lands.

(b) In the event of land exchanges with, or acquisitions from, a public agency in which the size of an owner’s parcel or parcels zoned as timberland production pursuant to Section 51112 or 51113 is reduced, the timberland production shall not be removed from the parcel except pursuant to Section 51121 and except for a cause other than the smaller parcel size.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “and (g) of section 51100 and that contiguous to the timberland already zoned as timberland preserve.” for “of Section 51100 or other holdings that now satisfy that section in subdivision (a).” Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” wherever applicable, and added “or her” after “his” and substituted “51104” for “51100” after “Section” in the first sentence of subdivision (a).

51114. Term of zoning of parcels as timberland production lands. Parcels zoned as timberland production shall be zoned as such for an initial term of 10 years. On the first and each subsequent anniversary date of the initial zoning, a year shall be added to the initial term of 10 years, unless a notice of rezoning is given as provided in Section 51120.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in the first sentence.

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51115. Restricted use of parcels zoned as timberland production lands. Parcels zoned as timberland production shall be zoned so as to restrict their use to growing and harvesting timber and to compatible uses. The growing and harvesting of timber on those parcels shall be regulated solely pursuant to state statutes and regulations.

History.—Stats. 1982, Ch. 1561, in effect January 1, 1983, added the second sentence. Stats. 1984, Ch. 1009, in effect January 1, 1985, substituted “production” for “preserve” after “timberland”, and deleted “and shall be entered as a timber preserve element of the county general plan” after “uses” in the first sentence.

Note.—Section 47 of Stats. 1984, Ch. 1009 provided no payment by state to local governments because of this act.

51115.1. Presumption; parcels zoned as timberland production.

(a) The zoning of a parcel pursuant to this chapter shall give rise to a presumption that timber operations, as defined in Section 4527 of the Public Resources Code, may reasonably be expected to and will occur on that parcel.

(b) The Legislature hereby declares that the enactment of this section is intended to make clear that the zoning of a parcel pursuant to this chapter is an indication that timber operations are expected to occur on that parcel at a future date. The Legislature further declares that this section is not intended and shall not be construed as altering any substantive or procedural requirement of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code, or of any rule or regulation adopted pursuant thereto.

History.—Added by Stats. 1982, Ch. 1418, in effect January 1, 1983.

51115.2. Nonconforming use; limitation. (a) Changes or additions to any nonconforming use shall be limited to ordinary maintenance and repair, except that no change or addition which enlarges or tends to make more permanent any nonconforming use shall be permitted.

(b) If any nonconforming use ceases for a period of one year or more, use subsequent to the cessation shall comply with this chapter.

History.—Added by Stats. 1982, Ch. 1489, in effect January 1, 1983.

51115.5. Timber operations not nuisance; exceptions. (a) Notwithstanding any other provision of law, timber operations conducted within a timber production zone pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Division 4 of the Public Resources Code) shall not constitute a nuisance, private or public.

(b) This section is not applicable with respect to any timber operation which (1) endangers public health or public safety or (2) prohibits the free passage or use of any navigable lake, river, bay, stream, canal, or basin, or any public park, street, or highway.

(c) For purposes of this section, the term “timber operation” means the cutting, removal, or both, of timber or other wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work incidental thereto, including, but not limited to, construction and maintenance of roads, fuel breaks, fire breaks, stream crossings, landings,

skid trails, beds for falling trees, fire hazard abatement, and preparation, transportation, and delivery of timber and other wood products to market.

History.—Added by Stats. 1982, Ch. 1489, in effect January 1, 1983.

51116. Authority of county or city to bring court enforcement action. The county or city may bring any action in court necessary to prohibit a use not permitted with respect to land zoned as timberland production including, but not limited to, an action to enforce the zoning restrictions by specific performance or injunction.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland”.

51117. Recording with county recorder. When land is zoned as timberland production or subsequently rezoned from a timberland production zone and after exhaustion of appeals, a notice of timberland production zone status, together with a map and assessor’s parcel numbers describing such land, shall be filed for record by the city or county in the recorder’s office. The notice and map shall become a part of the official records of the county recorder upon its acceptance by him for filing. The filing for record of a notice of timberland production, together with a map and assessor’s parcel numbers describing the land, shall impart constructive notice thereof.

History.—Stats. 1978, Ch. 1109, in effect September 26, 1978, deleted the phrase “recorded by the city or county in the recorder’s office in the same manner as deeds are recorded.”, and replaced it with the phrase “filed for record by the city or county in the recorder’s office.” and added the second sentence. Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after each “timberland” in the first sentence, and substituted “production” for “preserve” after “timberland” and “the” for “such” after “describing” in the third sentence.

51118. Assessment as timberland production lands. Land zoned as timberland production under this chapter shall be enforceably restricted within the meaning of Section 3(j) of Article XIII of the Constitution and the restriction shall be enforced and administered by the city or county in a manner to accomplish the purposes of that section and this chapter.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland”, and deleted “such” before and “as” after “a manner”.

51119. Section 21151 of the Public Resources Code not applicable. Any action of the board or council undertaken to zone a parcel as timberland production pursuant to Section 51112 or 51113 is exempt from the requirements of Section 21151 of the Public Resources Code.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted present wording of section for “Adoption of timberland preserve zones pursuant to this chapter shall be exempt from the requirements of Section 21151 of the Public Resources Code.” Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” and “is” for “of the Government Code shall be” after “51113”.

51119.5. Size of parcels zoned as timberland production lands. Parcels zoned as timberland production under this chapter may not be divided into parcels containing less than 160 acres unless the original owner prepares a joint timber management plan prepared or approved as to content by a registered professional forester for the parcels to be created. The joint timber management plan shall provide for the management and harvesting of timber by the original and any subsequent owners, and shall be recorded with the county recorder as a deed restriction on all newly created parcels. The deed restriction shall run with the land rather than with the owners, and shall remain in force for a period of not less than 10 years from the date division

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is approved by the board or council. The division shall be approved only by a four-fifths vote of the full board or council, and only after recording of the deed restriction.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted present wording for “Parcels zoned as timberland preserve under this chapter may not be divided into parcels containing less than 160 acres unless owners of resulting parcels submit a joint timber management plan prepared or approved as to content by a registered professional forester, and such owners enter into a binding contract with the board or council to manage and harvest timber on the timberland jointly, and are bound by the provisions of such management plan for a minimum period of 10 years. Such division shall be approved by a four-fifths vote of the full board or council.” Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in the first sentence, “The” for “Such” before “deed” in the third sentence, and “The” for “Such” before “division” in the fourth sentence.

Article 3. Rezoning

§ 51120. Request of owner; notice and hearing; procedure.

§ 51121. Vote of board or council; notice and hearing; procedure.

51120. Request of owner; notice and hearing; procedure. (a) If the owner desires in any year to rezone a parcel from its current timberland production zone, the owner shall give written notice, naming the new zone desired, and shall follow procedures established pursuant to Sections 65854 to 65857, inclusive. Unless the written notice is given at least 90 days prior to the anniversary date of initial zoning, the zoning term shall be deemed extended.

(b) Within 120 days of receipt of the written notice of an owner’s desire to rezone a parcel, the board or council, after a public hearing, shall rule on the request for rezoning.

(c) The board or council by a majority vote of the full body may remove the parcel from the timberland production zone and shall specify a new zone for the parcel.

(d) The new zone approved pursuant to subdivision (c) shall become effective 10 years from the date of approval. Upon rezoning the parcel shall be valued pursuant to Section 426 of the Revenue and Taxation Code, in the same manner as if a restriction were terminated as provided for in Section 51091 or 51245.

(e) If the board or council denies the owner’s request for change of zone pursuant to subdivision (b), the owner may petition for a rehearing.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” and deleted “of the Government Code” after “inclusive” in the first sentence of subdivision (a), substituted “production” for “preserve” after “timberland” in subdivision (c), and deleted “of this code” after “51245” in the second sentence of subdivision (d).

51121. Vote of board or council; notice and hearing; procedure.

(a) If the board or council after public hearing and by a majority vote of the full body desires in any year not to extend the term of zoning, the county or city shall give written notice of its intent to rezone following procedures established pursuant to subdivision (b) of Section 51113. A proposed new zone shall be specified. Unless the written notice is given at least 90 days prior to the anniversary date of the initial zoning, the zoning term shall be deemed extended.

(b) Upon receipt by the owner of a notice of intent to rezone from the county or city, the owner may make written protest of the notice and may appeal to the board or council within 30 days of notice from the county or

city. The board or council may at any time prior to the anniversary date withdraw the notice of intent to rezone.

(c) The board or council shall hold a public hearing on the proposed change and by a majority vote of the full body may reaffirm its intent to change the zoning and specify a new zone.

(d) A new zone of a parcel shall be effective 10 years from the date of the reaffirmation vote pursuant to subdivision (c). Upon rezoning the parcel shall be valued pursuant to Section 426 of the Revenue and Taxation Code.

(e) The owner may petition to be reheard.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “intent to rezone” for “nonrenewal” in subdivision (b), deleted “Upon receipt from the owner of a written protest of the zoning change,” before “the board” in subdivision (c), and deleted “date pursuant to subdivision (a), or in the case of a public hearing the date of the” before “reaffirmation” in subdivision (d).

Article 4. Immediate Rezoning

- § 51130. Purpose of article.
- § 51131. Request of owner.
- § 51132. Application; notice and hearing; procedure. [Repealed.]
- § 51133. Application for conversion required; procedure.
- § 51134. Application for conversion not required; procedure.

51130. Purpose of article. The purpose of this article is to provide relief from zoning as timberland production pursuant to this chapter only when the continued use of land in the timberland production zone is neither necessary nor desirable to accomplish the purposes of Section 3(j) of Article XIII of the Constitution and of this chapter.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after the first “timberland” and “production zone” for “preserve” after the second “timberland”.

51131. Request of owner. A timberland production zone may not be immediately rezoned except pursuant to a request by a landowner, and as provided in this article.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland”.

51132. Application; notice and hearing; procedure. [Repealed by Stats. 1977, Ch. 853, in effect September 17, 1977.]

51133. Application for conversion required; procedure. (a) If application for conversion is required pursuant to Section 4621 of the Public Resources Code, the board or council may tentatively approve the immediate rezoning after notice and hearing and only if by a four-fifths vote of the full body, and all of the following occur:

(1) A public hearing is held with notice of the hearing being given to all owners of lands situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(2) The board or council makes written findings that immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the California Constitution and of this chapter.

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(3) The board or council makes written findings that immediate rezoning is in the public interest.

(b) The board or council shall forward its tentative approval to the State Board of Forestry and Fire Protection, together with the application for immediate rezoning, a summary of the public hearing and any other information required by the State Board of Forestry and Fire Protection. The State Board of Forestry and Fire Protection shall consider the tentative approval pursuant to Section 4621.2 of the Public Resources Code. Final approval to an immediate rezoning is given only if the State Board of Forestry and Fire Protection has approved conversion pursuant to Section 4621.2 of the Public Resources Code. Upon final approval of conversion, the State Board of Forestry and Fire Protection shall notify the board or council of the approval, and the board or council shall remove the parcel from the timberland production zone and shall specify a new zone for the parcel.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977 designated the first sentence as subdivision (a), substituted “only if by” for “upon”, added “and” after “Body”, and added paragraphs (1) (2) and (3); and designated the next four sentences as subdivision (b). Stats. 1982, Ch. 1489, in effect January 1, 1983, added “State” before “Board” in four places, deleted “such” after “Upon” in the third sentence, and substituted “production” for “preserve” after “timberland” and “the” for “such” before the second “parcel” in the fourth sentence of subdivision (b). Stats. 1998, Ch. 972 (SB 989), in effect January 1, 1999, added “all of the following occur” after “body, and” in the first sentence, and added “California” before “Constitution” in the first sentence of paragraph (2) of subdivision (a); and added “and Fire Protection” after “Forestry” five times in subdivision (b) and substituted “the” for “such” after “council of” in the fourth sentence therein.

51134. Application for conversion not required; procedure. (a) If an application for conversion is not required pursuant to Section 4621 of the Public Resources Code, the board or council may approve the immediate rezoning request only if by a four-fifths vote of the full board or council it makes written findings that all of the following exist:

(1) The immediate rezoning would be in the public interest.

(2) The immediate rezoning does not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland production and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(3) The soils, slopes, and watershed conditions will be suitable for the uses proposed by the applicant if the immediate rezoning is approved.

(4) The immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the Constitution and of this chapter.

(b) The existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for granting a request for immediate rezoning pursuant to this section. Immediate rezoning shall be considered only if there is no proximate and suitable land which is not zoned timberland production for the alternate use not permitted within a timberland production zone.

(c) The uneconomic character of the existing use shall not be sufficient reason for the approval of immediate rezoning pursuant to this section. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.

(d) Immediate rezoning action shall comply with all the applicable provisions of state law and local ordinances.

(e) The county or city may require the payment of a fee by the landowner for the cost of processing the application and recording the necessary documentation.

History.—Stats. 1977, Ch. 853, in effect September 17, 1977, substituted “does” for “would” in subdivision (a)(2), substituted “will” for “would” and “by the applicant if the immediate rezoning is” for “if the conversion were” in subdivision (a)(3), and added subdivision (a)(4); and added “pursuant to this section” to the first sentences of subdivisions (b) and (c). Stats. 1982, Ch. 1489, in effect January 1, 1983, added “all of the following exist” after “findings that” in the first sentence of subdivision (a); deleted “and” after “interest” in subdivision (a)(1) and substituted “production” for “preserve” after “timberland” in subdivision (a)(2); and substituted “production” for “preserve” after each “timberland” in the second sentence of subdivision (b).

Article 5. Removal From Zone

- § 51140. Certification of rezoning.
- § 51141. Recording with county recorder.
- § 51142. Immediate rezoning; tax recoupment fee.
- § 51146. Fee indicated in assessment roll; lien against parcel.

51140. Certification of rezoning. Upon rezoning, the board or council shall certify the rezoning indicating the new zone and its effective date.

51141. Recording with county recorder. A copy of the certification of rezoning together with the map and assessor’s parcel numbers for the rezoned land shall be recorded by the city or county in the recorder’s office in the same manner as deeds are recorded, and commencing on the lien date next following the effective date of the new zone, such land shall be assessed on the same basis as real property is assessed generally in that county. The assessor may require a description of the portion of the property rezoned as provided in Section 456 of the Revenue and Taxation Code.

51142. Immediate rezoning; tax recoupment fee. (a) Upon immediate rezoning of a parcel in a timberland production zone, a tax recoupment fee shall be imposed on the owner of the land. Within 90 days following rezoning of land in the timberland production zone the county assessor shall reassess the rezoned parcels on the basis of the value of the property in its rezoned use. The assessor shall certify this value to the owner of the land and to the county auditor. The owner may appeal this new valuation in the same manner as an assessment appeal. The application for an appeal shall be filed with the clerk no later than 60 days after the date of the mailing of the notice certifying the new valuation. Except when under an appeal, after the certification the auditor shall, in cases of immediate rezoning, within 10 days compute the tax recoupment fee and certify the amount to the tax collector. The tax collector shall notify the owner in writing of the amount and due date of the fee. Fees shall be due 60 days after mailing of notification.

(b) The tax recoupment fee shall apply only in cases of immediate rezoning and shall be a multiple of the difference between the amount of the tax last levied against the property when zoned as timberland production and

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the amount equal to the assessed valuation of the rezoned property times the tax rate of the current levy for the tax rate area, that multiple to be chosen from the following table according to subdivision (c):

Year	Multiple
1	1.06000
2	2.18360
3	3.37462
4	4.63709
5	5.97332
6	7.39384
7	8.89747
8	10.49132
9	12.18080
10	13.97164

(c) The multiple shall correspond to the number of years or fraction thereof, but in no event greater than 10, for which the land was zoned as timberland production or was subject to a contract under Chapter 7 (commencing with Section 51200).

(d) Tax recoupment fees imposed pursuant to this section shall be due and payable to the county in which the rezoning has taken place.

(e) In cases of immediate rezoning, an owner may submit a written application, requesting the waiver of tax recoupment fees and explaining the reasons therefor, to either the State Board of Equalization or, where the county board of supervisors has adopted an authorizing resolution, to the county board of supervisors. The board receiving an application pursuant to this subdivision may, if it determines that it is in the public interest, waive all or any portion of the fees.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in the first sentence, “production zone” for “preserve” after “timberland” in the second sentence, and “the” for “such” before “certification” in the fifth sentence of subdivision (a); substituted “production” for “preserve” after “timberland” and “that” for “such” before “multiple” in subdivision (b); substituted “production” for “preserve” after “timberland” in subdivision (c); and, deleted “Reserve” after “Tax” and substituted “38903” for “38902” after “Section” in subdivision (d). Stats. 1994, Ch. 1222, in effect January 1, 1995, substituted “county in which the rezoning has taken place” for “State of California, and shall be placed in the Timber Tax Fund pursuant to Section 38903 of the Revenue and Taxation Code” after “payable to the” in subdivision (d); substituted “submit a” for “make” after “an owner may”, substituted “requesting the waiver” for “to the State Board of Equalization requesting waiver” after “written application”, and added “, to either the . . . board of supervisors” after “the reasons therefor” in the first sentence, added “receiving an application pursuant to this subdivision may” after “The board”, and deleted “may” after “the public interest,” and substituted “fees” for “fee” in the second sentence of subdivision (e). Stats. 2001, Ch. 407 (SB 1181), in effect January 1, 2002, added the fifth sentence in subdivision (a); deleted “such” after “under” in the former fifth sentence and substituted “mailing” for “receipt” before “of notification” in the former seventh sentence thereof; capitalized “Chapter” after “contract under” in subdivision (c); and added a comma after “application” in the first sentence of subdivision (e).

Note.—Section 12 of Stats. 2001, Ch. 407 (SB 1181) provided that notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

51146. Fee indicated in assessment roll; lien against parcel. A fee imposed under this article shall be indicated on the assessment roll and when so indicated shall become a lien against the parcel of land in the same manner as county general taxes.

Article 6. Eminent Domain or Other Acquisition*

- § 51150. Public policy.
- § 51151. Public agency defined.
- § 51152. Location of public improvement on timberland production zone.
- § 51153. Exception of locating on timberland production zone.
- § 51154. Enforcement by mandamus.
- § 51155. Rezoning required when land zoned as timberland production zone is acquired by public agency.

51150. Public policy. It is the policy of the state to avoid, whenever practicable, the location of any state or local public improvements and any improvements of public utilities, and the acquisition of land therefor, in timberland production zones.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland.”

51151. Public agency defined. (a) As used in this section, Section 51152, and Section 51155, “public agency” means the state, or any department or agency thereof, and any county, city, school district, or other local public district, agency, or entity; and “person” means any person authorized to acquire property by eminent domain.

(b) Whenever it appears that land within a timberland production zone (TPZ) may be required by a public agency or person for a public use, the public agency or person shall advise the Secretary of Resources and the local governing body responsible for the administration of the land of the intention to consider the location of a public improvement within the TPZ.

Within 30 days thereafter the Secretary of Resources and the local governing body shall forward to the public agency or person concerned their comments with respect to the effect of the location of the public improvement on the land within the TPZ and those comments shall be considered by the public agency or person. Failure of any public agency or person to comply with the requirements of this section shall invalidate any action by the agency or person to locate a public improvement within a TPZ. This subdivision does not apply to the erection, construction, alteration or maintenance of gas, electric, water, or communication transmission facilities within a TPZ if that TPZ was established after submission of the location of the facilities to the city or county for review or approval.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” and “land” for “preserve” after “administration of the” in the first paragraph, and substituted “those” for “such” before “comments” in the first sentence, “the” for “such” after “action by” in the second sentence, and “the” for “such” after “location of” in the third sentence of the second paragraph of subdivision (b).

51152. Location of public improvement on timberland production zone. (a) No public agency or person shall locate a public improvement within a timberland production zone (TPZ) based primarily on a consideration of the lower cost of acquiring a land in a TPZ.

(b) No public agency or person shall acquire timberland zoned as timberland production pursuant to this chapter for any public improvement if there is other land within or outside the TPZ on which it is reasonably feasible to locate the public improvement.

*Added by Stats. 1977, Ch 853, in effect September 17, 1977.

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History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in both subdivision (a) and subdivision (b).

51153. Exception of locating on timber production zone. Section 51152 shall not apply to:

(a) The location or construction of improvements where the board or council administering the TPZ approves or agrees to the location thereof.

(b) The acquisition of easements within a TPZ by the board or council administering the TPZ.

(c) The location or construction of any public utility improvement which has been approved by the Public Utilities Commission.

(d) Public works required for fish and wildlife enhancement and preservation.

(e) Improvements for which the site or route has been specified by the Legislature in such a manner as to make it impossible to avoid the acquisition of land under contract.

(f) All state highways on routes as described in Sections 301 to 622, inclusive, of the Streets and Highways Code, as those sections read on October 1, 1965.

(g) All facilities which are part of the State Water Facilities as described in subdivision (d) of Section 12934 of the Water Code, except facilities under paragraph (6) of said subdivision (d).

(h) Land upon which condemnation proceedings have been commenced prior to July 1, 1977.

51154. Enforcement by mandamus. Section 51152 shall be enforceable only by mandamus proceedings by the local governing body administering the timberland production zone or the Secretary of Resources. However, as applied to condemnors whose determination of necessity is not conclusive by statute, evidence as to the compliance of the condemnor with Section 51152 shall be admissible on motion of any of the parties in any action otherwise authorized to be brought by the landowner or in any action against him.

History.—Stats. 1992, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in the first sentence.

51155. Rezoning required when land zoned as timberland production zone is acquired by public agency. When any action in eminent domain for the condemnation of the fee title of an entire parcel of land zoned as timberland production is filed or when that land is acquired in lieu of eminent domain for a public agency or person or whenever there is any such action or acquisition by the federal government or any person, instrumentality or agency acting under authority or power of the federal government, the parcel shall be deemed immediately rezoned (pursuant to Section 51130) as to the land actually being condemned or so acquired as of the date the action is filed and for the purposes of establishing the value of the land, the timberland production zone (TPZ) shall be deemed never to have existed.

Upon the termination of such a proceeding, the parcel shall be immediately rezoned for all land actually taken or acquired.

When an action to condemn or acquire less than all of a parcel of land subject to a TPZ is commenced, the parcel shall be deemed immediately rezoned as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to the TPZ will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the TPZ.

When an action to condemn or acquire an interest which is less than the fee title of an entire parcel or any portion thereof, of land subject to a TPZ is commenced, the parcel shall be deemed immediately rezoned as to that interest and for the purpose of establishing the value of that interest only shall be deemed never to have existed, unless the remaining interests in any of the land subject to the TPZ will be adversely affected, in which case the value of that damage shall be computed without regard to the TPZ.

The land actually taken shall be removed from the TPZ. Under no circumstances shall land be removed that is not actually taken, except that when only a portion of the land or less than a fee interest in the land is taken or acquired, the parcel may be immediately rezoned with respect to the remaining portion or interest upon petition of either party, and pursuant to the provisions of Article 4 (commencing with Section 51130).

For the purposes of this section, a finding by the board or council that no authorized use may be made of the land if the TPZ is continued on the remaining portion or interest in the land may satisfy the requirements of subdivisions (a), (b), and (c) of Section 51134, and subdivisions (a), (b), and (c) of Section 4621.2 of the Public Resources Code.

History.—Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after each “timberland” and added “section” before “51130)” in the first paragraph; and deleted “of this chapter” after “51130)” in the second sentence of the fifth paragraph. Stats. 1983, Ch. 1281, in effect September 30, 1983, deleted “such” after “when” in the third and fourth paragraphs, substituted “that” for “such” before the second and third “interest” in the fourth paragraph, and deleted “subdivision (a) of Section 51132” after “requirements of” in the sixth paragraph.

CHAPTER 7. AGRICULTURAL LAND

Article 3. Contracts

§ 51246. Termination of contract.

51246. Termination of contract. (a) If the county or city or the landowner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be. Within 30 days of the expiration of the contract, the county or city shall deliver a notice of expiration to the Director of Conservation.

(b) No city or county shall enter into a new contract or shall renew an existing contract on or after February 28, 1977, with respect to timberland zoned as timberland production. The city or county shall serve notice of its intent not to renew the contract as provided in this section.

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(c) In order to meet the minimum acreage requirement of an agricultural preserve pursuant to Section 51230, land formerly within the agricultural preserve which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) may be taken into account.

(d) Notwithstanding any other provision of law, commencing with the lien date for the 1977–78 fiscal year all timberland within an existing contract which has been nonrenewed as mandated by this section shall be valued according to Section 423.5 of the Revenue and Taxation Code, succeeding to and including the lien date for the 1981–82 fiscal year. Commencing with the lien date for the 1982–83 fiscal year and on each lien date thereafter, such timberland shall be valued according to Section 434.5 of the Revenue and Taxation Code.

History.—Stats. 1969, p. 2812, in effect November 10, 1969, added “county or city or the” before “landowner” and deleted “his” before “intent”. Stats. 1976, Ch. 176, p. 316, in effect May 24, 1976, added the second and third paragraphs. Stats. 1977, Ch. 833, in effect September 17, 1977, designated the three existing paragraphs as subdivisions (a) (b) and (d) respectively and added subdivision (c). Stats. 1981, Ch. 845, in effect January 1, 1982, deleted “and succeeding until the end of the contract, such timberland shall be valued according to Section 426 of the Revenue and Taxation Code. Commencing with the lien date next succeeding the termination date of the contract,” after “1982–83 fiscal year” in the former second and third sentences of subdivision (d). Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” in both subdivision (b) and subdivision (c). Stats. 1989, Ch. 943, in effect January 1, 1990, added second sentence in subdivision (a).

Article 5. Cancellation

§ 51282.5 Cancellation; land zoned as timberland production.

51282.5. Cancellation; land zoned as timberland production. The owner of any land which has been zoned as a timberland production pursuant to Section 51112 or 51113, and that zoning has been recorded as provided in Section 51117, may petition the board or council for cancellation of any contract as to all or part of the land. Upon petition, the board or council shall approve the cancellation of the contract.

The provisions of Section 51283 shall not apply to any cancellation under this section, and no cancellation fee shall be imposed.

History.—Added by Stats. 1976, Ch. 176, in effect May 24, 1976. Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland,” “that” for “such” before “zoning” and “the” for “such” after “part of” in the first sentence, and deleted “such” after “Upon” and substituted “the” for “such” after “cancellation of” in the second sentence of the first paragraph.

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PUBLIC RESOURCES CODE

DIVISION 4. FORESTS, FORESTRY AND RANGE AND
FORAGE LANDS

PART 2. PROTECTION OF FOREST, RANGE AND
FORAGE LANDS

CHAPTER 8. FOREST PRACTICE ACT

Article 7. Timber Harvesting

* * * * *

4582.8. Timber harvesting plans; tax rate area designations. Within 10 days from the date that a timber harvesting plan is determined to be in conformance under Section 4582.7, or within 10 days from the date of receipt of a notice of timber operations, a nonindustrial timber harvest notice, a notice of exemption to convert less than three acres to a nontimber use pursuant to Section 4584, or an emergency notice filed pursuant to Section 4592, the director shall transmit copies thereof to the State Board of Equalization. Any notice of exemption or notice of emergency transmitted to the State Board of Equalization pursuant to this section shall include, among other things, an estimate of the timber owner as to whether the timber to be harvested pursuant to the notice will or will not be exempt from timber yield tax pursuant to Section 38116 of the Revenue and Taxation Code as interpreted and implemented by the State Board of Equalization.

History.—Added by Stats. 1976, Ch. 176, p. 318, in effect May 24, 1976. Stats. 1981, Ch. 714, in effect January 1, 1982, deleted former subdivision (a); relettered former subdivisions (b) and (c) as subdivisions (a) and (b), respectively; deleted “Effective on January 1, 1977,” before “Within”, substituted “(b)” for “(c)”, and substituted “Director” for “State Forester” in the first paragraph of subdivision (a); and deleted “Effective on March 1, 1977,” before “Within” and substituted “the” for “such” before “harvest” and before “land is” in the first sentence of subdivision (b). Stats. 1983, Ch. 1281, in effect September 30, 1983, deleted “(a)” before “Within”, deleted “pursuant to subdivision (b)” after “operations”, and deleted “and the assessor of the county in which the timber subject to the harvesting plan or notice is located” after “Equalization”, and deleted the former second paragraph of former subdivision (a); and deleted former subdivision (b). Stats. 1989, Ch. 1290, in effect January 1, 1990, substituted “determined to be” for “deemed” after “timber harvest plan is” and added “or a nonindustrial timber harvest notice” after “notice of timber operations”. Stats. 1994, Ch. 746, in effect September 22, 1994, substituted “from the date that” for “after” after “Within 10 days”, substituted “from the date of” for “after” after “within 10 days”, substituted “,” for “or” after “timber operations”, and added “a notice of exemption to convert less than three acres to a nontimber use pursuant to Section 4584, or an emergency notice filed pursuant to Section 4592,” after “timber harvest notice,”. Stats. 1998, Ch. 591 (SB 2237), in effect January 1, 1999, added the second sentence.

Note.—Section 18 of Stats. 1989, Ch. 1290, provided that Section 1 of that act (which amended Section 4582.8) shall become operative on January 1, 1991, or upon the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Section 13, whichever date occurs earlier.

* * * * *

4584. Exempt activities. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter or portions thereof, any person engaged in forest management whose activities are limited to any of the following:

- (a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.
- (b) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.

- (c) The cutting or removal of dead, dying, or diseased trees of any size.
- (d) Site preparation.
- (e) Maintenance of drainage facilities and soil stabilization treatments.
- (f) Timber operations on land managed by the Department of Parks and Recreation.

(g) (1) The one-time conversion of less than three acres to a nontimber use. No person, whether acting as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, may obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or any other legal entity has an officer or employee, a person who has received this exemption within the past five years, whether as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. "Person," for purposes of this subdivision, means an individual, partnership, corporation, or any other legal entity.

(2) (A) Notwithstanding Section 4554.5, the board shall adopt regulations that become effective and operative on or before July 1, 2002, and do all of the following:

(i) Identify the required documentation of a bona fide intent to complete the conversion that an applicant will need to submit in order to be eligible for the exemption in paragraph (1).

(ii) Authorize the department to inspect the sites approved in conversion applications that have been approved on or after January 1, 2002, in order to determine that the conversion was completed within the two-year period described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of the California Code of Regulations.

(iii) Require the exemption under this subdivision to expire if there is any change in timberland ownership. The person who originally submitted an application for an exemption under this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

(iv) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that violations of the conversion exemption, including conversions applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars (\$10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

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(h) Easements granted by a right-of-way construction agreement administered by the federal government if any timber sales and operations within or affecting these areas are reviewed and conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(i) The cutting, removal, or sale of timber or other solid wood forest products from the species *Taxus brevifolia* (Pacific yew), provided that the known locations of any stands of this species three inches and larger in diameter at breast height are identified in the exemption notice submitted to the department. Nothing in this subdivision is intended to authorize the peeling of bark from, or the cutting or removal of, *Taxus brevifolia* within a watercourse and lake protection zone, special treatment area, buffer zone, or other area where timber harvesting is prohibited or otherwise restricted pursuant to board rules.

(j) (1) The cutting or removal of trees in compliance with Sections 4290 and 4291 which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and legally permitted structure that complies with the California Building Code, when that cutting or removal is conducted in compliance with this subdivision. For purposes of this subdivision, an “approved and legally permitted structure” includes only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.

(2) (A) The cutting or removal of trees pursuant to this subdivision shall be limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in accordance with any regulations adopted by the board pursuant to this section.

(B) Trees may not be cut or removed pursuant to this subdivision by the clearcutting regeneration method, by the seed tree removal step of the seed tree regeneration method, or by the shelterwood removal step of the shelterwood regeneration method.

(3) (A) Surface fuels, including logging slash and debris, low brush, and deadwood, that could promote the spread of wildfire shall be chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations pursuant to this subdivision.

(B) (i) All surface fuels that are not chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.

(ii) The costs incurred by the department, city, or county, as the case may be, to abate the nuisance upon any parcel of land subject to the timber operations, including, but not limited to, investigation, boundary

determination, measurement, and other related costs, may be recovered by special assessment and lien against the parcel of land by the department, city, or county. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ad valorem taxes.

(4) All timber operations conducted pursuant to this subdivision shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances. Nothing in this paragraph is intended to authorize the cutting, removal, or sale of timber or other solid wood forest products within an area where timber harvesting is prohibited or otherwise restricted pursuant to the rules or regulations adopted by the board.

(5) (A) The board shall adopt regulations, initially as emergency regulations in accordance with subparagraph (B), that the board considers necessary to implement and to obtain compliance with this subdivision.

(B) The emergency regulations adopted pursuant to subparagraph (A) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

History.—Added by Stats. 1973, Ch. 880, in effect January 1, 1974. Stats. 1975, Ch. 372, in effect January 1, 1976, added “cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines or the” after “limited to the”, added “or minor forest products, including fuelwood,” after “ornamental purposes”, and added “that” after “determining”. Stats. 1987, Ch. 987, in effect January 1, 1988, substituted “Upon determining that the exemption is consistent with the purposes of this chapter, the” for “The” at the beginning of the sentence; added “any of the following:” after “limited to”; added the subsection numbers “(1)” before “The cutting . . .”, “(2)” before “The planting. . .”, and “(3)” before “The cutting . . .”; deleted “, on determining that such exemption is consistent with the purposes of this chapter” after “of any size”; and added subsections (4) and (5). Stats. 1989, Ch. 1161, in effect January 1, 1990, deleted “the provisions of” after “exempt from” in the first sentence; substituted the subsection letters for the subsection numbers; and added subsections (f), (g), and (h). Stats. 1992, Ch. 756, in effect January 1, 1993, added subsection (i). Stats. 1994, Ch. 746, in effect September 22, 1994, added subsection (j). Stats. 1996, Ch. 521. Stats. 2001, Ch. 627 (AB 671), in effect January 1, 2002, added paragraph (1) designation in subdivision (g), added second, third, and fourth sentences and paragraph (2) therein; substituted “Sections” for “Section” after “in compliance with” in subdivision (j)(1); deleted a comma after “fuels” and substituted “jurisdiction” for “jurisdiction” in subdivision (j)(3)(B)(i); and substituted “accordance” for “acordance” in subdivision (j)(5)(B).

4584.5. Registration; timber yield tax. Nothing in Section 4584 shall exempt the owner of any timber harvested from registering with the State Board of Equalization or from the payment of any applicable timber yield taxes imposed pursuant to Section 38115 of the Revenue and Taxation Code.

History.—Added by Stats. 1994, Ch. 746, in effect September 22, 1994.

* * * * *

4592. Emergency notice. Notwithstanding any other provisions of this chapter, a registered professional forester may in an emergency, on behalf of a timber owner or operator, file an “emergency notice” with the department that shall allow immediate commencement of timber operations. The emergency notice shall include a declaration, under penalty of perjury, that a bona fide emergency exists which requires immediate harvest activities, and that any applicable timber yield taxes will be paid pursuant to

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Section 38115 of the Revenue and Taxation Code. Those emergencies shall be defined by the board and may include, but are not limited to, the necessity to harvest to remove fire-killed or damaged timber or insect or disease-infested timber, or to undertake emergency repairs to roads.

Article 9. Conversion *

- § 4621. Application for conversion; procedure.
- § 4621.2. Conditions for approval of application; written findings.
- § 4622. Additional conditions for approval of application.
- § 4623. Affidavit of intent to convert land; additional proof of intent.
- § 4624. Denial of conversion permit; reasons.
- § 4624.5. Hearing on denial of conversion permit.
- § 4625. Approval of application.
- § 4626. Revocation of permit.

* * * * *

4621. Application for conversion; procedure. (a) Any person who owns timberlands which are to be devoted to uses other than the growing of timber shall file an application for conversion with the board. The board shall, by regulation, prescribe the procedures for, form, and content of, the application. An application for a timberland conversion permit shall be accompanied by an application fee, payable to the department, in an amount determined by the board pursuant to subdivision (b).

(b) The board shall establish, by regulation, a system of graduated timberland conversion permit fees to finance the cost of administering the article.

History.—Stats. 1975, Ch. 372, in effect January 1, 1976, substituted “who” for “, firm, corporation, company, partnership, or government agency that” in the first sentence. Stats. 1990, Ch. 1237, in effect January 1, 1991, added “(a)” at the beginning of the section, substituted “the” for “such” after “content of” in the second sentence, and added the third sentence to subdivision (a) and added subdivision (b).

4621.2. Conditions for approval of application; written findings. (a) If the timberlands which are to be devoted to uses other than the growing of timber are zoned as timberland production zones under Section 51112 or 51113 of the Government Code, the application shall specify the proposed alternate use and shall include information the board determines necessary to evaluate the proposed alternate use. The board shall approve the application for conversion only if the board makes written findings that all of the following exist:

- (1) The conversion would be in the public interest.
 - (2) The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.
 - (3) The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved.
- (b) The existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for conditionally approving an application for

* Article 9 added by Stats. 1973, Ch. 880, p. 1630, in effect January 1, 1974.

conversion. Conversion shall be considered only if there is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone.

(c) The uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.

(d) In the event that the board delegates its responsibilities under this section to the director pursuant to Section 4627, the director shall make the written findings required by subdivision (a). In the event that the director denies a conversion, the applicant may request a hearing before the board within 15 days of the denial. The hearing shall be scheduled within 60 days from the filing of the appeal.

History.—Added by Stats. 1976, Ch. 176, p. 318, in effect May 24, 1976. Stats. 1981, Ch. 714, in effect January 1, 1982, substituted “any information which” for “such information as” in the first sentence, substituted “the” for “such” before application”, added “all of the following” after “makes”, and deleted “that” after “findings” in the second sentence of subdivision (a); substituted “,” for “;” and “in subsections (a)(1) and (a)(2); substituted “is not” for “shall not be” in the first sentences of subdivisions (b) and (c); and substituted “If” for “In the event that” and “Director” for “State Forester” in the first and second sentences, and substituted “The” for “Such” in the third sentence of subdivision (e). Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted “production” for “preserve” after “timberland” and “information the board determines necessary” for “any information which the board determines to be necessary” after “include” in the first sentence, and substituted “written findings that all of the following exist” for “all of the following written findings” after “makes” in the second sentence of subdivision (a); substituted “shall not alone be” for “is not alone” before “sufficient” in the first sentence, and substituted “production” for “preserve” after each “timberland” in the second sentence of subdivision (b); substituted “shall not be” for “is not” after “use” in the first sentence of subdivision (c); and, substituted “In the event that”, for “If” at the beginning of the first and second sentences of subdivision (e). Stats. 1990, Ch. 1237, in effect January 1, 1991, deleted former subdivision (d) which provided “The board shall establish and publish a rate schedule of fees to be paid by the landowner for the cost of processing the application and recording the necessary documentation.”, and relettered former subdivision (e) as subdivision (d).

4622. Additional conditions for approval of application. Approval of an application for conversion shall be conditioned upon the granting of the necessary rezoning or use permit if rezoning or a use permit is required. Except as provided in Section 4584, all timber shall be cut pursuant to an approved conversion pursuant to Section 4581, excluding requirements for stocking and methods of silviculture, except that the timber harvesting plan required by that section need not be prepared by a registered professional forester, and no timber operations shall commence until the granting of such rezoning or use permit as may be required and until the timberland conversion permit is recorded in the county recorder’s office in each county wherein the timberland to be converted is located.

History.—Stats. 1989, Ch. 1161 in effect January 1, 1990, substituted “Except as provided in Section 4584, all” for “No” before “timber”, “shall” for “may” before “be cut pursuant to”, and “pursuant to” for “except under the provisions of” before “Section 4581” in the second sentence.

4623. Affidavit of intent to convert land; additional proof of intent. The application shall be accompanied by an affidavit by the applicant that the applicant has a present bona fide intent to convert the land to a use other than timber growing. The board may require such additional proof of intent to convert as it deems necessary.

4624. Denial of conversion permit; reasons. The board shall deny a timberland conversion permit for any of the following reasons:

(a) The applicant is not the real person in interest.

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- (b) Material misrepresentation or false statement in the application.
- (c) The applicant does not have a bona fide intention to convert the land.
- (d) The failure or refusal of the applicant to comply with the rules and regulations of the board and the provisions of this chapter.
- (e) The failure of the proposed alternate use in the application to meet the findings required in subdivision (a) of Section 4621.2 and other provisions of that section.

History.—Stats. 1976, Ch. 176, p. 319, in effect May 24, 1976, added subdivision (e).

4624.5. Hearing on denial of conversion permit. A person whose application for a timberland conversion permit has been denied shall be entitled to a hearing before the board pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

4625. Approval of application. If the board finds the applicant does have a bona fide intention to convert the land, it shall approve the application, authorizing the applicant to cut and remove any and all trees, provided that he otherwise complies with this chapter.

4626. Revocation of permit. If at any time the board finds that the applicant has failed to conform to the intent to convert, as set forth in the application and proof, the board may revoke the permit and require full compliance with this chapter. Any permit revocation shall be recorded in the same manner as the original permit.

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CALIFORNIA ADMINISTRATIVE CODE

TITLE 18. PUBLIC REVENUES

CHAPTER 1. STATE BOARD OF EQUALIZATION—PROPERTY TAX
RULES AND REGULATIONS

Subchapter 1. Valuation Principles and Procedures (1–100)

* * * * *

Rule 41. MARKET VALUE OF TIMBERLAND.

Reference: Sections 110, 401, 423.5, Revenue and Taxation Code.

(a) THE TIMBER APPRAISAL UNIT. In determining the timber to be valued as a unit, there shall be combined those parcels having:

(1) The same legal ownership. Timber sale contracts shall not be included in the unit.

(2) Commercial timber production as a dominant use.

(3) Geographical and physical conditions which permit similar treatment and economic removal of the timber to a common processing center. The typical practices of timberland owners and timber purchasers shall be used as a guide to indicate the geographical areas which are suitable for inclusion in the unit. Parcels shall not be excluded from the unit because they are outside the county, or because they are eligible for assessment under Section 423.5 of the Revenue and Taxation Code.

(b) IMMEDIATE HARVEST VALUE OF TIMBER. The immediate harvest value of the timber on each of the separate parcels in the unit shall be determined. Immediate harvest value is the amount of cash or its equivalent for which timber would be transferred from a willing and informed seller to a willing and informed buyer, both seeking to maximize their incomes, if the timber could be harvested in the forthcoming year. The appraiser must consider all elements of value, such as volume by species, quality, defect, market conditions, volume per acre, size of timber, accessibility, topography, logging conditions, and distance from a processing center capable of utilizing the timber.

(c) MARKET VALUE OF TIMBER. This section shall only apply to timber in the unit not eligible for assessment under Section 423.5 of the Revenue and Taxation Code. The immediate harvest value of the timber on the timber appraisal unit is synonymous with market value if all the merchantable timber may reasonably be harvested in the forthcoming year. If the immediate harvest value of the timber on the appraisal unit is not synonymous with market value, it shall be converted to market value by application of a valuation factor to the immediate harvest value of the timber on each parcel in the unit. In determining the valuation factor, the appraiser shall consider the effect on market value of the total timber volume on the unit and

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the length of time over which the owner and knowledgeable prospective purchasers might reasonably be expected to harvest the timber, as indicated by sales of comparable timbered properties.

(d) MARKET VALUE OF TIMBERLAND. This section shall only apply to areas in the unit not eligible for assessment under Section 423.5 of the Revenue and Taxation Code. The market value of the timber on each parcel in the appraisal unit shall be added to the market value of the land as determined by the comparative sales approach. When land included within the timber appraisal unit has uses in addition to timber production, the appraiser shall determine its value with consideration for such uses, as evidenced by recent sales of comparable land. Allowances must be made for the value of any trees or improvements included in the sales of properties used as indicators of the value of land in the appraisal unit.

History: Adopted March 27, 1968, effective April 28, 1968.
Amended November 16, 1972, effective January 21, 1973.

Rule 53. OPEN-SPACE VALUE OF TIMBERLAND.

Reference: Section 423.5, Revenue and Taxation Code.

(a) THE TIMBER APPRAISAL UNIT. The timber appraisal unit shall be as defined in Property Tax Rule No. 41, except that it shall include only properties eligible for assessment under Section 423.5 of the Revenue and Taxation Code.

(b) TAXABLE VALUE. Land and standing timber used for the production of timber for commercial purposes, whether planted or of natural growth, when eligible for assessment under Section 423.5 of the Revenue and Taxation Code, shall be valued by determining the present worth of the net income which the future harvest of timber crops can reasonably be expected to yield and the present worth of the net income attributable to other allowed compatible uses of the land. The value of timber which is exempt under Article XIII, Section 3(j) of the State Constitution shall be excluded when determining taxable value of the property, but the value of land supporting exempt timber shall be included and determined in accordance with section (f).

(c) NET INCOME. The amount of income to be capitalized is the net income which an informed owner or an informed buyer of the timber appraisal unit may anticipate on the lien date that the property assessable under Section 423.5 of the Revenue and Taxation Code will yield in the future from the harvest of timber crops and the net income from other allowed compatible uses of the property. Net income shall be estimated as follows:

(1) When computing the expected annual or periodic net income from the harvest of timber crops, the appraiser shall determine the difference between revenue and expenditures. Revenue shall be estimated by multiplying the expected annual or periodic volume of timber to be harvested in the future by the immediate harvest

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value per unit of volume for similar timber. Revenue shall include all income from all forest products. Expenditures shall include the estimated outlays of money which are ordinary and necessary for the production and maintenance of revenue as defined in Section 423 of the Revenue and Taxation Code.

(2) When computing the net income attributable to compatible uses, the appraiser shall determine the difference between revenues and expenditures for each type of compatible use. Revenue shall be estimated on the basis of rents, fees, or charges for the use as provided by recently consummated leases, contracts, or verbal agreements on the subject property or comparable properties. Expenditures shall include any outlays which are ordinary and necessary for the production of revenue from the compatible use.

(d) INCOME CAPITALIZATION. The shape of the future net income stream shall govern the method used to discount the various future incomes.

(1) If the property is capable of producing an equal annual income in perpetuity or may be valued as if it will produce an equal annual income, the expected annual net income shall be divided by the capitalization rate to estimate present worth.

(2) If the property is capable of producing an equal periodic income in perpetuity or may be valued as if it will produce an equal periodic income, the expected net income shall be divided by $(1 + p)^n - 1$, where n is the number of years between receipt of the periodic incomes and p is the capitalization rate.

(3) If the property is not capable of producing perpetually an equal annual income or an equal periodic income, but is capable of producing unequal annual or periodic incomes at regular or irregular intervals, the present worth of the net income stream shall be estimated by computing the sum of the present worths of the individual incomes on a year-by-year or period-by-period basis.

(e) AREAS WITHOUT TIMBER EXEMPTION. The appraiser shall estimate the annual or periodic net income from these areas in accordance with section (c). Taxable value will be the present worth of land and timber in accordance with section (d), using the capitalization rate prescribed in Section 423(b)(1), (2), and (3) of the Revenue and Taxation Code.

(f) AREAS WITH TIMBER EXEMPTION. In determining the taxable value for these areas by excluding the value of exempt timber, the appraiser shall:

(1) Derive a total value for the land and exempt timber by:

(A) Estimating the annual or periodic net income from these areas in accordance with section (c).

(B) Computing the present worth of the land and timber in accordance with section (d), using a capitalization rate which is the sum of the bond and risk rate components prescribed in Section 423(b)(1) and (2) of the Revenue and Taxation Code.

(2) Allocate the total value derived in (1) between the land and exempt timber by:

Rule 53. (Contd.)

(A) Estimating the market value of the property using the comparative sales approach.

(B) Subtracting the estimated market value of the timber. The remainder will be the estimated market value of the land under the exempt timber and is to be used only for purposes of allocating present worth between the exempt timber and the land thereunder.

(C) Multiplying the present worth of the property, as determined in (1)(B), by the ratio of the market value of the land to the total market value of the property, as determined from (2)(A) and (B), to derive the present worth of the land plus the present worth of the taxes.

(D) Computing the taxable value of the land by multiplying the present worth derived in (2)(C) by a fraction in which the numerator is the sum of the capitalization rate components prescribed in Section 423(b)(1) and (2) and the denominator is the sum of the capitalization rate components prescribed in Section 423(b)(1), (2), and (3).

(g) TOTAL TAXABLE PROPERTY VALUE. The taxable value for the nonexempt areas, as determined in section (e), shall be added to the taxable value for the exempt areas, as determined in section (f), to determine the total taxable property value. The value assigned to each parcel in the unit shall reasonably reflect each source of income that is attributable to the parcel.

(h) EFFECTIVE DATE. This rule shall be effective from and after March 1, 1973.

History: Adopted November 16, 1972, effective March 1, 1973.
Amended December 17, 1975, effective January 25, 1976.

Rule 471. TIMBERLAND.

Reference: Article XIII A, Sections 1, 2, California Constitution.

Consistent with the intent of the provisions of Section 3(j) of Article XIII of the California Constitution and the legislative interpretation thereof, the value for land which has been zoned as timberland pursuant to Section 51110 or 51113 of the Government Code shall be ascertained for the 1979 lien date from the schedule contained in Section 434.5 of the Revenue and Taxation Code and thereafter from the most recent board-adopted timberland site class value schedule.

History: Adopted June 29, 1978, effective July 3, 1978
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.

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Rule 1020. TIMBER VALUE AREAS.

Reference: Sections 38109, 38204, Revenue and Taxation Code.

The following nine designated areas contain timber having similar growing, harvesting and marketing conditions and shall be used as timber value areas in the preparation and application of immediate harvest values:

Area 1

Del Norte County
Humboldt County
Trinity County south and west of that part of the exterior boundary of the
Shasta-Trinity National Forest between Humboldt and Tehama Counties

Area 2

Alameda County
Contra Costa County
Marin County
Mendocino County
Monterey County
San Francisco County
San Mateo County
Santa Clara County
Santa Cruz County
Sonoma County

Area 3

Siskiyou County west of Interstate Highway No. 5

Area 4

Shasta County west of Interstate Highway No. 5
Trinity County except that portion which is south and west of that part of the
exterior boundary of the Shasta-Trinity National Forest between Humboldt and
Tehama Counties

Area 5

Colusa County
Glenn County
Lake County
Napa County
Sacramento County
Solano County
Tehama County west of Interstate Highway No. 5
Yolo County

Area 6

Lassen County
Modoc County
Shasta County east of State Highway No. 89
Siskiyou County east of Interstate Highway No. 5

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Area 7

Butte County
Nevada County
Placer County
Plumas County
Shasta County between Interstate Highway No. 5 and State Highway No. 89
Sierra County
Sutter County
Tehama County east of Interstate Highway No. 5
Yuba County

Area 8

Amador County
Calaveras County
El Dorado County
Tuolumne County

Area 9

Alpine County
Fresno County
Imperial County
Inyo County
Kern County
Kings County
Los Angeles County
Madera County
Mariposa County
Merced County
Mono County
Orange County
Riverside County
San Benito County
San Bernardino County
San Diego County
San Joaquin County
San Luis Obispo County
Santa Barbara County
Stanislaus County
Tulare County
Ventura County

History: Adopted November 4, 1976, effective January 1, 1977.
Amended January 31, 1977, effective February 1, 1977.

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Rule 1021. TIMBERLAND GRADING RULE.

Reference: Sections 434.1, 38204, Revenue and Taxation Code.

(a) **GENERAL.** Beginning with the 1977–78 fiscal year, privately owned land and land acquired for state forest purposes which is primarily devoted to and used for growing and harvesting timber and is zoned for a minimum 10-year period as timberland production zone (TPZ) will be valued for property taxation on the basis of its use for growing and harvesting timber, plus the value, if any, attributable to existing, compatible, nonexclusive uses of the land.

(b) **SITE QUALITY.** Timberland is rated for productivity based upon its ability to produce wood growth on trees. Five general site classes are established wherein Site I denotes areas of highest productivity, Site II and Site III denote areas of intermediate productivity, and Site IV and Site V denote areas of lowest productivity. The five site quality classes are set forth within each of three general forest types: redwood, Douglas fir, and mixed conifers.

Land zoned as timberland production zone (TPZ) shall be graded by the assessor using the following site classification table as a measure of land productivity.

TIMBERLAND PRODUCTION ZONE SITE CLASSIFICATION TABLE

<i>Productivity Potential</i>	<i>Young-Growth Redwood</i> ¹		<i>Douglas Fir</i> ²		<i>Ponderosa Pine Jeffrey Pine, Mixed Conifer & True Fir</i> ³		
	Site Class	Site Index Feet @ 100 yrs.	Site Class	Site Index Feet @ 100 yrs.	Site Class	Site Index Feet @ 100 yrs.	Site Index Feet @ 300 yrs.
Highest	I	180 or more	I	194 or more	I	114 or more	163 or more
Intermediate	II	155–179	II	164–193	II	93–113	138–162
	III	130–154	III	134–163	III	75–92	113–137
Lowest	IV	105–129	IV	103–133	IV	60–74	88–112
	V	Less Than 105	V	Less Than 103	V	Less Than 60	Less Than 88

¹ Lindquist, James L., and Marshall N. Palley. Empirical yield tables for young-growth redwood, Calif. Agr. Exp. Stn. Bull. 796, 47 pp., 1963.

² McArdle, Richard E., and Walter H. Meyer. The yield of Douglas fir in the Pacific Northwest. USDA Tech. Bull. 201, 74 pp., Rev. 1961. Adjusted to average height of dominant trees after Forest Research Note No. 44, Pacific Northwest Forest and Range Experiment Station, by Forest Survey, Calif. Forest and Range Exp. Stn., 1948.

³ Dunning, Duncan. A site classification for the mixed conifer selection forests of the Sierra Nevada. USDA Forest Serv. Calif. Forest and Range Exp. Stn. For. Res. Note 28, 21 pp., 1942.

Young-Growth Redwood. Site index based on average height of dominant trees at breast height age of 100 years. Use in young-growth redwood stands in which more than 20 percent of the stand by basal area is redwood and when sufficient dominant redwood trees are available to determine site index.

Douglas Fir. Site index based on average height of dominant trees at age 100 years. Use in young-growth redwood stands in which 20 percent or less of the stand

Rule 1021. (Contd.)

by basal area is redwood or when sufficient dominant redwood trees are not available to determine site index. Use also in old-growth redwood stands. In such cases, measure Douglas fir trees for determining site index. Also use for Sitka spruce, grand fir, hemlock, bishop's pine, and Monterey pine stands.

Ponderosa Pine, Jeffrey Pine, Mixed Conifer, and True Fir. Site index based on average height of dominant trees at age 100 and 300 years. Use also for lodgepole pine stands. For old-growth stands, use height of dominants at age 300 years.

(c) OPERABILITY. Timberland shall be rated for operability based upon such factors as accessibility, topography, and legislative or administrative restraints. On or before December 31, 1979, two classes of operability shall be used by the assessor and designated as operable or inoperable. Areas of inoperable land must be identified by the assessor. For the purpose of land site classification, inoperable means that any of the following circumstances are applicable:

- (1) Extreme physical barriers prevent access.
- (2) Legal or administrative restraints prevent access or harvest.
- (3) Rocky ground, steep slopes, or sterile soil prevent growing or harvesting merchantable timber.

History: Adopted January 6, 1977, effective March 3, 1977.
Amended June 21, 1983, effective October 7, 1983.

Rule 1022. STANDARD UNIT OF MEASURE.

Reference: Sections 38109, 38204, Revenue and Taxation Code.

(a) GENERAL. In determining quantities of timber for purposes of the timber yield tax the Scribner Decimal C Log Rule based on a maximum scaling length of 20 feet (Scribner Decimal C (Short Log) Scale) shall be used as the standard board foot log rule for timber that is measurable by the net board foot method. This standard board foot log rule for such timber is to be used in all instances, except that in those rare instances when circumstances preclude the use of this standard board foot log rule for such timber, conversion factors as specified herein shall be employed for reporting harvested timber originally scaled using other than the standard board foot log rule.

Timber that is not normally scaled by the net board foot method shall be measured using the unit commonly employed by those dealing with the wood products to which the timber is to be converted, e.g.

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INTENDED WOOD PRODUCT	MEASUREMENT UNIT
Fuel Wood	Cord
Christmas trees, poles and pilings	Lineal foot
Chip wood	Gross scale of useable wood

(b) DEFINITIONS. When used in this section the terms board foot and board foot log rule shall have the following meaning:

- (1) Board foot—a solid piece of wood, 12 inches wide, 12 inches long and 1 inch thick.
- (2) Board foot log rule—a method for estimating the volume in board feet of a log with a known diameter and length.

(c) CONVERSION FACTORS. When board foot volumes are not scaled using the standard board foot log rule the following factors shall be used to convert the scale employed to the standard scale.

(1) The Humboldt Log Scale shall be converted to gross Scribner Decimal C (Short Log) Scale by the application of a multiplier factor of 1.45. The actual defect in board feet as determined by the difference between that scale and the mill tally records shall be deducted from the gross Scribner scale. Until January 1, 1978, the Humboldt Log Scale when applied to old growth redwood shall be converted to net Scribner Decimal C (Short Log) Scale by the application of a multiplier factor of 1.15.

(2) The Spaulding Log Scale (Short Log) shall be converted to Scribner Decimal C (Short Log) Scale by the application of a multiplier factor of 1.02.

(3) When logs harvested in California are scaled outside California, and only when circumstances preclude the use of the Scribner Decimal C Log Rule based on a maximum scaling length of 20 feet (Scribner Decimal C (Short Log) Scale), the Scribner Decimal C Log Rule volumes attributable to long log scaling shall be converted to Scribner Decimal C (Short Log) Scale by the application of a multiplier factor of 1.20.

History.—History:

Adopted November 4, 1976, effective January 1, 1977.

Amended August 19, 1980, effective December 31, 1980.

Rule 1023. IMMEDIATE HARVEST VALUE.

Reference: Sections 38109, 38204, Revenue and Taxation Code.

(a) DEFINITIONS. Immediate harvest value is the amount that each species or subclassification of timber would sell for on the stump at a voluntary sale made in the ordinary course of business for purposes of immediate harvest. Such value shall be expressed to the nearest dollar per standard unit of measure applicable pursuant to Rule No. 1022, except that the immediate harvest value of Christmas trees shall be the sale price of such trees in quantities of 100 or more in the market area nearest to

Rule 1023. (Contd.)

the place where the trees are cut and adjusted to reflect the value of the trees immediately prior to severance.

Timber value areas are those areas containing timber having similar growing, harvesting, and marketing conditions.

Harvest value is the immediate harvest value in a timber value area as of the first day of the period specified by the applicable harvest value schedule.

“Timber at similar locations” means timber in an area of comparable elevation and topography, and subject to comparable logging conditions and accessibility to the point of conversion.

(b) HARVEST VALUE SCHEDULES. The timber owner shall determine the taxable value of the timber harvested for each harvest operation by the use of the Board harvest value schedule applicable to the tax reporting period.

The harvest value schedules adopted by the Board provide estimates of harvest values by considering gross proceeds from sales on the stump of similar timber of like quality and character at similar locations, or gross proceeds from sales of logs, or of finished products, adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest, or a combination of both. Allowance is made for differences in age, size, quality, cost of removal, accessibility to point of conversion, market conditions, and other relevant factors.

Each value schedule provides harvest values for a timber value area taking into account species and average tree or log size. Appropriate allowances for costs of removal have been calculated by consideration of the most common logging systems used within the area, the actual methods of harvesting the timber, the volume per acre, the total volume removed per harvest operation, the typical haul range distances to a conversion point and any excessive required costs of removal.

(c) DAMAGED TIMBER. The Board, either on its own motion after consultation with the Timber Advisory Committee or in response to an application from a timber owner may specify a modification of immediate harvest value to reflect material changes in timber values that result from fire, blowdown, ice storm, flood, disease, insect damage, or other cause, for any area in which damaged timber is located. Whenever a timber owner uses such modified immediate harvest values for reporting damaged timber, he shall maintain appropriate accounting records as specified by the Board.

History: Adopted January 6, 1977, effective March 3, 1977.
Amended and effective June 24, 1997.

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Rule 1024. EXEMPT TIMBER.

Reference: Section 38116, Revenue and Taxation Code.

(a) GENERAL. There is exempt from timber yield tax timber whose immediate harvest value is so low that, if not exempt, the tax on the timber would amount to less than the cost of administering and collecting the tax.

(b) EXEMPT HARVEST. Timber, removed from a timber harvest operation whose immediate harvest value does not exceed \$3,000 within a quarter, is exempt from timber yield tax pursuant to the authority granted by section 38116 of the Revenue and Taxation Code. For the purpose of this rule, immediate harvest value shall be that value described in sections 38109 and 38204 of the Revenue and Taxation Code, and in Rule 1023. The Board harvest value schedule applicable to the tax reporting period at the time of harvest shall define the timber harvest operation, and shall be the basis for determining the immediate harvest value thereof.

(c) Nothing in this rule shall authorize the exemption of timber whose immediate harvest value exceeds \$3,000.

History: Adopted December 9, 1998, effective April 8, 1999.

Rule 1026. TIMBER OWNER.

Reference: Sections 38104, 38108, 38115, Revenue and Taxation Code.

Exempt person or agency. The timber yield tax is imposed not only on every timber owner who harvests his or her timber or causes it to be harvested but also on every timber owner of felled or downed timber who acquires title to such felled or downed timber in the state from a person or agency exempt from property taxation under the Constitution or laws of the United States or under the Constitution or laws of the State of California. In some instances, such timber owners may acquire title to felled or downed timber directly from the exempt person or agency. In other instances, however, such timber owners may acquire title to felled or downed timber from an exempt person or agency which itself has previously acquired title to the timber from another exempt person or agency.

Where timber owners of felled or downed timber have acquired title to the timber in the state from an exempt person or agency, “first person who acquires either the legal title or beneficial title to timber after it has been felled” means the first non-exempt person who acquires such title from an exempt person or agency, and such a person is a timber owner liable for applicable timber yield tax (e.g., where the person initially felling timber is exempt from property taxation and the person acquiring the felled timber is also exempt from property taxation, the first non-exempt person who thereafter acquires title to the felled timber is liable for applicable timber yield tax).

As used in Sections 38104 and 38115 of the Revenue and Taxation Code, “timber owner” does not include, however, any person who harvests timber, causes it to be harvested, or acquires title to felled or downed timber derived from Indian lands held

Rule 1026. (Contd.)

in trust by the United States for an Indian Tribe or Band or for any individual Indian member thereof; and no timber yield tax shall be imposed with respect to that timber upon any person who thereafter acquires title to the timber.

History: Adopted August 19, 1980, effective December 31, 1980.
Amended August 5, 1983, Section 38301 repealed effective January 1, 1983.
Amended April 22, 1992, effective September 12, 1992.

Rule 1027. U. S. FOREST SERVICE TIMBER VOLUMES.

Reference: Sections 38108, 38115, Revenue and Taxation Code.

(a) GENERAL. U. S. Forest Service timber sale contract holders shall report timber volumes harvested as hereinafter provided.

(b) SCALED VOLUME BILLINGS. The Timber Sale Statement of Account (TSSA) is the basis for most U. S. Forest Service billing statements. Timber volumes shall be reported for the quarters reflected by the Timber Sale Statements of Account (e.g., April, May, and June, 1980 TSSA volumes shall be reported for the second quarter of 1980).

(c) LUMP-SUM BILLINGS. Timber volumes actually harvested, regardless of the volume purchased from, and billed for by the U. S. Forest Service, shall be reported for the quarters in which scaled. Timber sale contract holders must get and retain scaling data for such volumes.

(d) OTHER METHODS OF REPORTING. Timber harvested pursuant to U. S. Forest Service timber sale contracts may be reported on a basis other than (b) or (c), above, only if a written description of the reporting basis to be used is submitted to and is authorized by the Timber Tax Division prior to the due date of the return and prior to reporting.

History: Adopted August 19, 1980, effective November 16, 1980.
Amended August 5, 1983, Section 38301 repealed effective January 1, 1983.

Rule 1031. RECORDS.

Reference: Sections 38703, 38704, Revenue and Taxation Code.

(a) GENERAL. Every timber owner, timberland owner, timber operator, and person harvesting timber for forest products purposes, shall keep adequate and complete records showing:

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(1) Contractual or financial agreements relative to the ownership and harvest of timber for forest products.

(2) Harvest locations for logged timber.

(3) The basis for adjustments to harvest values.

These records shall include the books of account ordinarily maintained by the average prudent businessman engaged in the activity, together with all bills, receipts, invoices, scaling records, tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns.

(b) MICROFILM RECORDS. Microfilm reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, etc., are acceptable in lieu of original records, and microfilm reproductions of supporting data such as sales invoices, purchase invoices, credit memoranda, scale tickets, trip tickets, etc., are acceptable providing the following conditions are met:

(1) Appropriate facilities are provided for the preservation of the films for periods required under subparagraph (d).

(2) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

(3) The taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for purposes of verification of tax liability.

(4) Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support a claimed adjustment for immediate harvest value, such as scaling tickets and trip records, must be maintained in an order by which they can be readily related to the harvesting for which the value adjustment is sought.

(c) RECORDS PREPARED BY AUTOMATED DATA PROCESSING SYSTEMS. An ADP tax accounting system shall include a method of producing visible and legible records that will provide the necessary information for verification of the taxpayer's tax liability.

(1) **RECORDED OR RECONSTRUCTIBLE DATA.** ADP shall make possible the tracing of any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

(2) **GENERAL AND SUBSIDIARY BOOKS OF ACCOUNT.** A general ledger, with source references, shall be maintained to coincide with financial reports for tax reporting periods. Subsidiary ledgers used to support the general ledger

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accounts shall also be in printout form, or the system be capable of producing a printout for any appropriate calendar or fiscal period.

(3) **SUPPORTING DOCUMENTS AND AUDIT TRAIL.** Records shall be kept in such a manner as to provide an audit trail that allows for ready identification of details underlying the summary accounting data. The system should be so designed that supporting documents, such as sales invoices, purchase invoices, scaling tickets, credit memoranda, etc., are readily available.

(4) **PROGRAM DOCUMENTATION.** A description of the ADP portion of the accounting system shall be available. The statements and illustrations of the scope of operations should be sufficiently detailed to indicate, (a) the application being performed, (b) the procedures employed in each application (supported by flow charts, block diagrams or other satisfactory description of the input or output procedures), and (c) the controls used to insure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

(d) **RECORDS RETENTION.** All records pertaining to transactions subject to the timber yield tax must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(e) **EXAMINATION OF RECORDS.** All of the above-described records shall be made available for examination on request by the Board or its authorized representatives.

(f) **FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records shall be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

History: Adopted January 6, 1977, effective March 3, 1977.